Annual Report

of the

Commissioner of Conflict of Interest

The Hon. E. N. (Ted) Hughes, Q.C.

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May 23, 1992

The Honourable Joan Sawicki, M.L.A.
Speaker of the Legislative Assembly
Room 207, Parliament Buildings
Victoria, B.C.
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Dear Ms. Sawicki:

I have the honour and pleasure to present my first Annual Report as Commissioner of Conflict of Interest under the Members' Conflict of Interest Act.

This report covers the period from December 20, 1990 until this date. To-day is the first anniversary of my appointment as Commissioner of Conflict of Interest. For some months prior to May 23, 1991 I carried out duties under the Act as Acting Commissioner.

This report is submitted pursuant to section 11 of the Act.

Yours truly,

E.N. (Ted) Hughes
Commissioner of
Conflict of Interest

Recycled Paper

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"A Most Honourable Profession"

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INTRODUCTION

Likely never before in the history of British Columbia has such significant legislation as the Members' Conflict of Interest Act had the swift passage through the Legislature as was afforded this statute on the 26th and 27th days of July, 1990. First reading occurred on the first of those days and by the end of the second day all three readings were completed and Royal assent had been given.

In opening debate on second reading, the sponsoring Minister, the then Provincial Secretary said:

> "I am pleased to open debate on second reading of Bill 66. This bill provides a comprehensive framework for dealing with a broad range of issues related to conflict of interest, both real and perceived. This legislation stems from our belief in the public's right to know. The citizens of British Columbia have a right to know that the business of this House is carried out in a manner that meets the highest standard of conduct...
>
> We believe that the components of the Members' Conflict of Interest Act build a strong framework which will provide an effective balance between a member's privacy and the right of British Columbians to know that holders of public office conduct their business only in the public interest. I believe that all members of this House can take pride in adhering to that principle.
>
> Mr. Speaker, this bill establishes a process which will give British Columbians a firm guarantee that public business is conducted free from conflict of interest."

The then leader of the Opposition and now Premier of the Province immediately thereafter expressed the views of his caucus with respect to conflict of interest legislation. He said:

> "The issue of conflict of interest laws is of great interest and concern for British Columbians. New Democrats believe that our province deserves the toughest conflict of interest laws that we can come up with."

By Order in Council on September 25, 1990, I was appointed Acting Commissioner under the Act and the statute was proclaimed into law as of December 1, 1990. The "Acting" designation was required because a 2/3 vote of Members present in the Legislature was a condition to appointment of a Commissioner and, at the time, the Legislature was not in session. On the 23rd day of May, 1991, a vote was held in the Legislature, resulting in the unanimous recommendation to the Lieutenant Governor in Council by the Members present that I be named Commissioner and Order in Council to that effect issued the same day.

This annual report is required by section 11 of the Act and is prepared precisely one year following my appointment as Commissioner. It covers also the preceding months during my term as Acting Commissioner.

THE EXPERIENCE SINCE PROCLAMATION DATE

Last month I had two occasions to review the operation of the Act since its inception and to make public comment on it. The first of those occasions was the preparation and the April 7th delivery of a speech entitled "A Most Honourable Profession", to a luncheon hosted by the Certified General Accountants Association of British Columbia to which all Members of the Legislature were invited guests. Many members accepted the invitation including the Premier and the Leader of the Opposition. The presentation dealt with:

1. The current prevailing negative public perception across our nation of elected public officials and the reason for it;

2. My optimism for substantial improvement in that perception because of:

   (a) the enactment, proclamation and operation of the Members' Conflict of Interest Act with its enforcement mechanisms and opportunities for improvement and advancement through educational initiatives;

   (b) the positive attitude of the 75 elected Members of the thirty-fifth Parliament of British Columbia.

I believe that what I said on that occasion properly belongs in this annual report and for that reason it will be found as Appendix A.

The second occasion was on April 27th when I was invited to appear as a witness before the Special Joint Committee of the Senate and House of Commons on Conflict of Interest which is studying Bill C-43 introduced into the House of Commons on November 22, 1991. My remarks on that occasion comprised, firstly, of an opening statement in which I reviewed the successful operation of British Columbia's Members' Conflict of Interest Act over the preceding 17 months and, secondly, of my answers to questions asked by Committee members. In the opening statement I reviewed what I called "the three hats" that I wear under the statute;

1. My responsibilities under sections 12 and 13 with respect to members' disclosures;

2. Advice and opinions under sections 14 and 15 to Members of the Legislature and the Executive Council;

3. Inquiry powers under section 16.

Again, I believe that what I said on that occasion about these matters belongs in this annual report and for that reason the record of the dialogue that took place April 27th will be found as Appendix B.

It will be seen in Appendix B that during my presentation with my colleague from Nova Scotia, the Honourable Alexander MacIntosh, Q.C. (our colleague, the Ontario Commissioner, the Honourable Gregory T. Evans appeared earlier as a witness) that I made a number of references to the witness who immediately preceded us before the Committee, Paul Martin, M.P. In the course of my remarks I suggested that his evidence be required reading for "...potential candidates of calibre and substance from all political parties" who are contemplating entry into public life. It is my understanding that Mr. Martin was the only Member of Parliament who voluntarily came forward to the Joint Committee to state his views. I consider those views to be a valuable contribution to the dialogue that is taking place today across Canada on conflict of interest matters and for that reason his presentation to the Special Joint Committee will be found as Appendix C.

SPECIFIC SITUATIONS ARISING UNDER THE ACT

The contents of Appendices A and B address all general matters that I believe I have a responsibility to report on and which should be brought to the attention of the Honourable Speaker and through her, to all honourable members of the Legislature and, ultimately, through the release of this report to the public at large. There are, however, specific situations that have arisen under the Act with respect to which I have either given opinions or have decided on appropriate interpretations or rulings. I will comment on those that I consider to be relevant and of interest to readers of this report and will do so by reference to the section of the Act under which they arose. So that both my preceding comments and those that follow are meaningful, a copy of the Members' Conflict of Interest Act will be found as Appendix D.

1. Sections 1 and 2 - Definition of Conflict of Interest

Circumstances under which a member is deemed to have a conflict of interest for the purposes of the Act are disclosed in Section 2. Briefly, that state of affairs will arise where, during a decision making process, a member knows there is the opportunity to further his or her private interest. Section 1 enumerates situations that do not come within "private interest" and included is "an interest in a decision that affects a member as a broad class of electors".

In November, 1991 it was made known that I had been consulted pursuant to section 15 (2) of the Act about the participation in Cabinet of some members of the Executive Council during discussions pertaining to amendments to the Guidelines and Regulations enacted under the Compensation Fairness Act. I believe it appropriate that, at this time, I make reference to the advice I gave on that occasion. Just as a member can come to me for a confidential opinion under section 14 of the Act, so may the Executive Committee be able to do so under Section 15 of the Act but when the fact that my opinion has been sought has been made known publicly other than through my office, I believe that fact lifts any shield of confidentiality and it is open to me to make my decision public and that is what I will do in the immediately following paragraphs.

Specifically, the question related to situations where a spouse of a member of Cabinet has a direct pecuniary interest in a collective agreement wage settlement which has been rolled back by the Compensation Commissioner or in a future collective wage agreement which falls under the scope of the Act. The purpose and effect of the amendments was to provide for the possibility of higher compensation or at least greater flexibility in the provision of compensation for public sector employees than then existed under the Regulations and Guidelines.

Spouses of some of the members of the Executive Council are teachers who, along with many other groups of employees, are public sector employees to whom the Compensation Fairness Act applies. Hence, the spouses' direct pecuniary interest in the results flowing from the enactment of the amendments.

The opinion I gave dealt with whether the amendments held out the opportunity to further the "private interest" of those members of Cabinet with spouses in the category discussed in the preceding paragraph, as that term is used in section 2 of the Members' Conflict of Interest Act. On that issue, I held that the fact that the pecuniary interest accrued to the spouse is not determinative of the matter. That is because where a decision will advance the pecuniary interest of a member's spouse, that decision must be treated, for the purpose of the Members' Conflict of Interest Act, as advancing the private interest of the member. That decision accords with the spirit and intent of the statute.

I then addressed the central question, namely, whether the amendments to the Guidelines and Regulations under the Compensation Fairness Act affected a member of the Executive Council as one of a "broad class of electors" as that term is used in the exception set forth in section 1 of the Members' Conflict of Interest Act.

There were, at the time, in excess of 300,000 public sector employees to whom the Compensation Fairness Act applied. The proposed amendments to the Guidelines and Regulations would affect, either immediately or at some time within the next few years, all of those public sector employees. I answered the central question in the following way;

> "While it is difficult to define with any precision what is meant by a "broad class of electors" I am quite satisfied that "public sector employees" do comprise a broad class of electors. The fact that the proposed amendments will affect all or a significant number of teachers...and perhaps more immediately than some of the other groups of public sector employees because of the timing of negotiations, does not detract from the proposition that the proposed amemndments affect a broad class of electors of which the teachers are clearly a subset. Having arrived at that conclusion it is unnecessary for me to express an opinion as to whether "teachers" themselves as a class represent a "broad class of electors" or indeed whether the proposed decision with respect to the amendments is one of "general public application", which is another exception to what constitutes a "private interest" within the meaning of the Act."

That being my opinion, it followed that neither disclosure nor withdrawal pursuant to section 9 of the Act was required of the members whose spouses were teachers employed in British Columbia.

2. Section 5 - Acting for Constituents

This section emphasizes that the Act does not prohibit the activities in which members normally engage on behalf of constituents. I believe a liberal interpretation of this section is called for. After all, the essence of democratic government is the principle of representation. There are, however, some limits, particularly when the member sits in Cabinet.

It is a common practice for a member's constituency office to lend advice and, on occasion, to give advocacy assistance to a constituent who is seeking a remedy or redress from a commission, board, agency or other tribunal established by government. I have ruled that a minister must not make personal representation on behalf of a constituent in such a forum regardless of the ministry under which the commission, board,

agency or other tribunal operates. A minister acting in such a way would always be seen as a minister of government and that is a position of responsibility that he or she cannot shed at will and it would be improper to appear in an advocacy role of this kind.

I have concluded, however, that constituency assistants in a minister's office can give advocacy assistance to constituents provided it is not before a commission, board, agency or other tribunal within the sphere of the minister's legislative responsibility. Where that is the case, an alternative could be to have a constituency assistant in a neighbouring constituency office perform that role.

3. Section 6 - Gifts

Fees, gifts or personal benefits, other than compensation that is provided for by the laws of the Province, are not to be accepted by members where there is a connection, either directly or indirectly, with the performance of the member's duties of office. Family gifts and practices of that kind such as occurred before election to office can continue to be given and received. I have recently ruled, after some years of uncertainty, at least insofar as members other than ministers and parliamentary secretaries are concerned, that airline bonus points accruing as a result of travelling on government business cannot be used for personal business or pleasure by Members of the Legislative Assembly. That applies regardless of whether they are ministers, parliamentary secretaries or private members. It does seem that the prohibition with respect to ministers and parliamentary secretaries was put in place several years ago. Such a use would be a contravention of section 6. It may be that some way can be found to have points accruing in

this way transferred to the Office of the Speaker for use by members when attending conferences, meetings of parliamentary associations, etc. That possibility is under consideration but the clear answer to use for personal purposes is a negative one.

An exception to the prohibition that I have just reviewed is that a gift or personal benefit received as an incident of the protocol or social obligations of the member's office can be retained by the member. If the value exceeds $250.00 however, notification of the details of the gift must be made to my office. One interesting occurrence under this exception has been notification during the early months of this year of renovations made to a number of constituency offices through contributions of labour and materials. It may be that any long term benefits in this category that are of a lasting nature will belong to the landlord.

As will be noted in some of the public disclosure statements filed by me earlier this year, some unique decisions had been made with respect to disposition of gifts that have been received, although the member's legal obligation is met by reporting to me with respect to details of the gift if the value exceeds the stated amount.

4. Sections 12 & 13 - Disclosure Statements-Confidential and Public

The requirements of these sections are reviewed in detail in Appendix B. All 75 members who were elected in October, 1991 filed their returns within the required time frame following the election. In all instances where I made recommendations with respect to the manner by which members should comply with their

obligations under the Act, acceptance of my recommendations readily occurred. For the assistance of members, I believe it will be possible to make some improvements in the forms prior to distribution of the next set in early 1993.

Following the October 17, 1991 election, and before members of the new Cabinet assumed office, the then Premier-elect requested all those considered for that office have their assets, liabilities and sources of income reviewed by me for the purpose of advising him of any potential problems under the Members' Conflict of Interest Act. I gave advice in all instances and where changes were recommended they were immediately accepted and followed. While this referral, within days of the election, was not required by law, I believe it was a commendable practice and one with which I was pleased to cooperate.

5. Sections 14 and 15 - Opinions and Advice

I have also reviewed the operation of these sections in Appendix B. There are additional comments to be made. I am pleased that some members have, from time to time, asked for my opinion and recommendation with respect to their obligations under the Act. The fact that the consultation can be made in confidence is an impetus to the use and success of this service. I have endeavored to encourage members to bring their concerns to me, no matter how insignificant they might believe them to be.

The telephone is frequently used and having established a relationship with each member as a result of the meeting I must have annually with each of them, a rapport has been built that facilitates that kind of approach. I hope that close contact will continue, particularly where the member feels the need for immediate assistance and also in situations that are likely

trivial in nature. In the coming twelve month period, however, members will likely hear me ask that they put their request for an opinion im writing as is called for by section 14 of the Act. That will apply to all matters of substance. Besides that procedure complying with the statutory requirements, I wish to build a precedent file that will be useful to me and to all members when repeat situations are raised by different members. Consistency is important and that cannot always be assured in the more casual environment. Also, in future years, I hope in my annual report to detail in an anonymous way conflict decisions made over the previous twelve months, such that a worthwhile educational component will emerge. Only through the formality of written exchanges can that occur.

In both Appendices A and B, I emphasized that no complaint by one member alleging contravention against another member has been made to me under section 15 (1) of the Act. That continues to be the case. It follows that no formal inquiry under section 16 has been conducted.

I have already dealt earlier in this report with an example of the utilization of section 15 (2) by the Executive Council in asking for an opinion on a matter respecting the compliance of members of Cabinet with the provisions of the Act.

It is to be noted that the alleged contravention that can be made by one member against another member under section 15 (1) of the Act and also the opinion that the Executive Council can request of me with respect to compliance by a member of the Executive Council under section 15 (2) of the Act, relate in each case, not only to the provisions of the Member's Conflict of Interest Act but also to section 25 of the Constitution Act. That section of that statute prohibits a member personally, or a

corporation in which he or she alone or jointly with close family members holds shares carrying more than 30% of the votes for the election of directors, from accepting from the Crown "money for the supply to the Province of any goods, service or work...".

While I am empowered to give opinions with respect to contravention or compliance with section 25 of the Constitution Act, in the instances just mentioned, it is to be emphasized that that provision is not conflict of interest legislation but, rather, is a prohibition that has been part of the law of this Province for many, many years. It is nothing new, but, what is new is giving the Conflict of Interest Commissioner power to give opinions on contravention or compliance with it. Some members have found it useful to seek my opinion with respect to situations arising under section 25.

Because of what I have said previously in this report when discussing section 2 of the Members' Conflict of Interest Act in context of the opinion given relating to the Compensation Fairness Act, to the effect that a decision advancing the pecuniary interest of a member's spouse is to be treated, for the purposes of the Members' Conflict of Interest Act, as advancing the private interest of the member, it is important to emphasize that situations arising under section 25 of the Constitution Act, are not the same. That is because of the difference in both language and intent as conveyed in the two statutes. I believe it appropriate and, hopefully, helpful to point out that distinction between the requirements of the two statutes lest anyone be unmindful that it exists.

AMENDMENTS TO THE ACT

My experience in working with the Members' Conflict of Interest Act has prompted me to suggest some amendments to it. I believe that at or about the time that this report is laid before the Legislative Assembly, amending legislation promised in the Speech from the Throne will be placed before honourable members for their consideration. Arising out of consultations I have had with officials, I have the expectation that most, if not all of the suggestions I have made will be placed before you. Also arising out of those consultations, I believe it is likely that other amendments will, as well, be placed before members for their consideration. I fully respect that whatever law is enacted is for members to say and is not and should not be my prerogative. I will be pleased to work within the framework of all amendments passed by the Legislature. If I can assist honourable members in any way in their consideration of these matters, I will, within the confines of my statutory responsibilities and authority, be pleased to do so.

OFFICE OPERATIONS

This office has not become part of a sprawling bureaucracy of exsisting government or a bureaucracy in its own right. Nor is there need for it to develop into something that fits that description. We carry out our mandate in modest surroundings two blocks south of the Parliament Buildings at Room 142, 548 Michigan Street, Victoria, B.C., V8V 1X4. I have committed one half of my time to the position of Commissioner of Conflict of Interest. At times, much more than that is required and at other times the demands are considerably less. Secretarial/administrative responsibilities are carried out by Ms. Jill Robinson who also works on a similar time basis. Except when I am out of the city, I am,

nevertheless, in the office every working day and when neither of us is present, provision is made for the recording of messages which are returned, at the latest, the next morning. I believe that the office works well on this basis and that the following budgetary information for the immediate past fiscal year (1991/92) and for the current fiscal year (1992/93) will attest to the description that I have portrayed of the office.

CONFLICT OF INTEREST COMMISSIONER

1991/92 BUDGET

	Annual Budget	Expended
Salaries, Wages and Benefits	$113,500	$43,000
Services	63,000	43,116
Supplies and Equipment	34,500	13,224
	$211,000	$99,399

1992/93 BUDGET

	Annual Budget
Salaries, Wages and Benefits	$115,000
Services	54,000
Supplies and Equipment	37,000
	$206,000

Appendix A

A MOST HONOURABLE PROFESSION

(Speech by E.N. (Ted) Hughes, Commissioner of Conflict of Interest, Province of British Columbia to the Certified General Accountants Association of British Columbia, Victoria, B.C. April 7, 1992 with all Member of the Legislative Assembly of B.C. as invited guests.)

There is a theory, subscribed to by some, that for those who benefit in their vocations from a public profile - business entrepeneurs and holders of public office being the most obvious two examples - any publicity is good publicity. I have never been convinced of the soundness of that proposition, but, I suppose that the advertising agencies of to-day would be quick to tell me I am wrong.

I pose the question: What is being said today in the public domain about elected public officials? Roy Bonisteel, writing in the United Church Observer a few months ago, said this;

> "Being a politician is likely the most unpopular profession in our country these days. Public opinion polls show them to be only a few notches above cat burglars in garnering our trust and respect. ...To serve our country in the political arena should be one of life's finer pursuits. Instead, for idealistic Canadians, it has become a one-way street to ridicule, disillusionment and shattered dreams."

Countless journalists, political scientists, and plain ordinary folk have in recent times chosen their own words to express the same thoughts. What Bonisteel has said, is the prevailing public perception to-day across our nation. That must be a matter of grave concern to all of us.

I have significant doubt that that kind of publicity could be considered by anyone to be good publicity.

Whatever has gone wrong to cause such a negative assessment?

I propose to-day to answer that question and then to look at the prospects for substantial improvement . I will make that latter assessment because I believe we sow the seeds of tremendous destruction to our system of government and its institutions if we either continue on the downhill spiral of recent times or allow the status quo to prevail. Fortunately, I believe, the environment for that substantial improvement to occur is present in this province to-day. I will tell you why I believe that is so.

Six days ago, as I travelled over the Prairies in flight, the attendant distributed the daily newspaper published below. The Armdale owned daily newspapers of Saskatchewan's two major cities has, like newspapers of our province, a political editor who writes daily from the Legislature. On Wednesday last, Dale Eisler's column started off as follows:

> "If politicians want to know why they suffer from a credibility gap, all they have to do is look in the mirror.
>
> They profess to being greatly distressed at the level of public cynicism toward politics, yet when it comes to actually addressing the problem, they're often unable to the muster the fortitude it takes.
>
> The problem seems to be that they don't begin to understand why people feel the way they do. What angers people and erodes their trust in politicians is when they see behaviour that, by any objective standard is simply wrong . When politicians use their positions to create privilege for themselves, it does more than anything to undermine the public trust.
>
> Very often, the examples that most perturb ordinary people are relatively minor in terms of the total picture. In other words, people are not necessarily outraged by an accumulated deficit of $5.2 billion, but they are angry about consequential benifits politicians bestow on themselves.
>
> It's the old story where people have a hard time relating to a deficit measured in the billions of dollars. But tell them about politicians who get non-accountable expense money or are seen to be taking advantaage of the public purse and they go wild.
>
> These issues people readily identify with because they can relate them directly to their own experience in the real world. Thus, the measuring stick people use is whether they can legitimately expect the same treatment in their own working lives.

> For some reason, politicians seem unable, or unwilling to make this connection. They do not comprehend how the public links its opinion of politicians to the status people in public life bestow on themselves."

That column could just as easily have been written in British Columbia. Its application is entirely applicable to our province. A search of columns of Jim Hume, Vaughn Palmer, Brian Kieran, Hubert Beyer etc. will show the same points being made through the choice of alternative words. It is within those paragraphs just quoted that I believe the answers lie to the question of what has gone wrong to cause the negative assessment of our politicians as representatively expressed by the quote from Roy Bonisteel. It is the use of position to create privilege for themselves, the bestowing of consequential benifits on themselves and the taking advantage of the public purse.

It doesn't seem to matter that most politicians are honest, hard working and dedicated to their jobs. The fact is that there have been enough allegations of wrong doing by politicians across this country to cause a 1990 Angus Reid poll to show that 72% of Canadians sampled believe that politicians don't care what ordinary people think and 58% think that politicians are becoming more corrupt and more likely to become involved in situations of conflict of interest.

Why do I believe there is room for optimism that substantial improvement can occur in this province in the immediate future? I have two reasons. The <u>first</u> is the creation of the legislative framework within which I do my work as Commissioner of Conflict of Interest. Four years ago Dian Cohen and a colleague in their economic communications consulting firm called for help for those elected to public office in sorting out problems of money management as they relate to their public responsibilities. They said,

> "...not everyone who may be suited for political life knows a lot about personal money management. It seems to us that if we are to require from our public figures that they meet exacting standards, they should be provided with help that recognizes the tremendous strain on them, and on their personal lives.

> ...One way might be for all new M.P.s to meet with a neutral counselor who could help them put their financial affairs in order to meet the criteria".

They then suggested the neutral body could be called "the office of conflict of interest". In the year that that call was made, Ontario passed its coinflict of interest legislation and British Columbia followed in 1990.

I see it as the Commissioner's job to identify acceptable ethical standards of behaviour and to educate and encourage adherence to those standards. The qualities inherent in an acceptable standard of ethical behaviour are those of honesty, integrity, fairness and bona fides. The public trust that the citizens expect of their politicians has those ingredients as ever present components.

In a sense the creation of conflict of interest or ethics offices or commissions can be compared to preventative medicine, as distinct from treating disease after its outbreak. One by one, bad apples always get rooted out. If the preventative medicine program does effective work, bad apples should be rare and hopefully, non existant.

I carry out my work in two ways. The first is through enforcement mechanisms, the requirements of disclosure being the most obvious of them. The second is an educational approach of discussing, explaining and creating understanding so that problem areas cease to exist.

The present framework of our statute allows me to fulfill both of those roles. In a few minutes I will refer, when expressing the second reason why I believe there is room for optimism in this province, how well, at least relatively speaking, our conflict of interest legislation has worked up until now. Before I turn to that, I want to comment on what is occurring in Canada at this moment on the conflict of interest scene, particularly at the national level.

Nova Scotia, New Brunswick, Ontario, Alberta and British Columbia all have conflict of interest legislation in place. In February last, my colleagues from Nova Scotia, New Brunswick and Ontario as well as the Deputy Registrar General of Canada who holds responsibility for the administration of the Conflict of Interest and Post Employment Code for public office holders (Ministers of the Crown, Parliamentary Secretaries, full time Governor-in-Council appointees and designated senior members of Ministerial exempt staff, etc. met in Victoria and formed C.O.I.N. - the Conflict of Interest Network). The advantage of us sharing experiences became obvious at the first meeting. There really are no experts in this field. It is an entirely new area and while those of us who are pioneers in the field are gaining knowledge day by day, if we are experts as some would suggest, we are very uneasily filling a void as experts, due entirely to the lack of expertise existing elsewhere at this early stage of development.

In a 1991 paper entitled "Government ethics commissioners: the way of the future?" Ian Greene of the Department of Political Science at York University described the purpose of ethics commissions as being,

> "to provide public officials with independent advice about the principles behind conflict of interest rules, and advice about how to comply with them".

He expressed the view that we constituted a useful support to conflict of interest legislation and that our arrival should be welcomed. He said:

> "An independent ethics commission is a more sensible mechanism for promoting compliance with conflict of interest legislation that such mechanisms as advice from line civil servants, or enforcement by judges or an auditor General"

I digress for a few moments to acquaint you with a most interesting happening that is occurring in Ottawa these days with respect to Conflict of Interest legislation that was given first reading in the House of Commons on November 22, 1991. It is the first conflict of interest legislation at the Federal level that proposes applicability to <u>all</u> members of the House of Commons and the Senate.

While there are many differences between the Federal Bill and our Act the central theme is similar, with the requirement of disclosure by all Members and the appointment of a Chief Commissioner fulfilling much the same role that I do in British Columbia. The Bill is now being studied by a Special Joint Committee of the House and the Senate. From reading the transcripts of the evidence presented to date there would appear to be some hesitation by some Members of the two Houses in embracing the concept of disclosure. Those who lean to that proposition have support from the first witness, the Honourable Mitchell Sharp, who co-authored a 1984 study with the Honourable Michael Starr on conflict of interest requirements pertaining to both elected and non-elected public servants other than ordinary Members of both Houses. The Honourable Mr. Sharp does not see a place in the legislation for disclosure by Senators or Members of Parliament who are neither Ministers nor Parliamentary Secretaries. He describes those representatives as "not public office holders" and makes the distinction on that basis.

The third witness before the special committee was the Honourable William D. Parker, former Chief Justice of the High Court of Justice for Ontario and the author of the Sinclair Stevens report. He speaks positively about the requirement of disclosure. He sees full disclosure as the highest standard that gives full public scrutiny.

At this point in time I will not go further in aligning myself with either of these two positions other that to say that I concur with the Honourable Mr. Parker when he said "But Mr. Sharp is in a period before that of my views, and I think that what was all right in the past may not be so today". If I am being hesitant about revealing my hand as to precisely where I stand on this issue (and I am not certain that I have been all that hesitant), it is because I am to be a witness later this month before the Special Joint Committee of the Senate and the House of Commons.

I must soon close but I have one piece of unfinished business. It is to indicate my second ground for belief that there is reason for optimism that, in this province at least, the tattered image of elected public office holders can be repaired and that respectability and honour can be returned to the privilege of serving in elected public office.

Primarily, that ground is the attitude of the seventy five members of the thirty-fifth Parliament of British Columbia. Last Tuesday I signed and filed the public disclosure statements with respect to each of the seventy five Members of the House. In every instance that process was preceded by a private meeting between me and each Member and sometimes with her or his spouse. I detected absolutely no presence of anyone wanting to perform with other than honour and respect, not only pertaining to the requirements of the law relating to conflict of interest but also in adhering to the principles of honesty, integrity, fairness and good faith that I have indicated are the essential ingredients of ethical behaviour and that are so essential to the return of public confidence in our politicians.

Let me go further - since the proclamation of our Act in December 1990 there has not been one complaint made to me by a Member of the House with respect to an alleged violation of the Act by another Member of the House and calling for an investigation by me. There is every justification to flag that as a most encouraging sign and hopefully, it will remain that way.

The Premier, speaking of the Government's committment to improvements to the legislation and presumeably to his insistence on a "Mr. amd Ms. Clean" reputation for all members of his caucus, publically declared his intention of relegating me to the role of the Maytag repairman - the loneliest person in town. The leaders of the other two parties have given me the same assurances and their full co-operation. Surely that has to auger well for the future.

I am absolutely satisfied that, with the positives I have just referred to, we can then turn this whole thing around. I fully and honestly believe that public confidence can be restored over the course of time. There are 76 of us who carry responsibility for that happening. I suggest that the chair of this very pleasant occasion invite us all back here, two years from now, and let us see if on that occasion we can present a report card with an A+ mark. The people of this province desperately want that result and will, I am satisfied, give us their confidence and respect if, by our actions and our deeds, we have earned it. I want my grandchildren to look at elected public service as A Most Honourable Profession. You want the same for your children and grandchildren.

When you cast your eyes down the list of ministries and the multitude of statutes administered by each, you have to realize the enormous responsibility that you carry, as lawmakers, for the conduct of the lives of all citizens of this province. Members of the public cannot afford other than honest, responsible and dedicated people carrying this onorous responsibility on their behalf.

A Most Honourable Profession indeed it is, presently with some dishonour and with some bruises and scars, but together, as the sun now comes over the horizon, I believe we can make it shine with all its brightness and stay permanently at high noon, smiling at our achievement. That is the challenge before us. We have the opportunity to be leaders in the nation, as elected public service is returned to its proper, accustomed and preeminient station in our society.

Appendix B

EVIDENCE

[*Recorded by Electronic Apparatus*]

Tuesday, April 28, 1992

• 0934

The Joint Chairman (Mr. Blenkarn): We're going to get started on the meeting. This is a resumption of consideration of the committee's reference concerning Bill C-43—the conflict of interest committee. Our witnesses this morning are the following: the Hon. Ted Hughes, Q.C., the commissioner of the British Columbia Commission on Conflict of Interest, and the Hon. Alexander MacIntosh, Q.C., the commissioner of the Nova Scotia Commission on Conflict of Interest.

• 0935

I want to thank you for coming. I suppose the easiest way is to have each of you, individually, say a few things—and I think we have your notes here—and then proceed to questioning. —Mr. Hughes.

Hon. Ted Hughes, Q.C. (Commissioner, British Columbia Commission on Conflict of Interest): Thank you, Mr. Chairman. I'm pleased to be here today, to have the opportunity of assisting the committee in the important and the timely work that you are about. If I may take 10 minutes or so, I'll make some introductory remarks. My colleague, I am sure, will also have some introductory statements to make. Then, if you have questions you wish to put to us, I am sure that will be entirely in order.

I refer to this as being an important and timely work that you are about because, in my judgment, you have the opportunity to put a process into place that will assist in the restoration of elected public office and service to an honourable and respected plane or status where, in my judgment, it rightfully belongs. It must be returned there if good, honest, successful, and public-minded citizens are going to offer themselves for service as Members of Parliament and, if you believe what you read in the newspapers, in due course to an elected Senate. Because of the importance and magnitude of the responsibilities you hold, citizens who have those kinds of credentials, in my view, must be attracted to service in the Parliament of Canada.

That service in elected public office is not seen in that light today, and I think that is pretty much an accepted fact. Why that is so does not require time and attention from me today. I spelled out some of my views on that in a speech that I gave in the presence of the Premier and the Leader of the Opposition of our Province of British Columbia, and some others, on April 7. I understand that a a copy of that statement has been circulated to you, so I see no need to dwell further on that. But I will be happy to receive any questions you want to ask.

I've had the opportunity of glancing at most of the evidence that you have heard in this committee to date. I therefore know something of the issues you face and the problem areas you must wrestle with as you prepare your report. It is my hope to be helpful to you today in some of those areas, and I propose to do that through reference to my responsibilities in British Columbia as the conflict of interest commissioner of that province.

Our act in British Columbia was, as I understand it, substantially patterned on the Ontario statute. From what I read in the evidence that has been given here, we have one thing in common with you in that our statute was prepared in great haste, as I gather was the case with Bill C-43 that you're considering here. Perhaps it was prepared in some haste for the same kind of reason: a response to the public concerns about certain instances that occurred in our respective jurisdictions.

Notwithstanding the fact that our statute was prepared in much haste—I think it is fair to say that it was conceived on a Tuesday and it was law by Friday night. It went through all of its readings in that short period of time, one week. In the month of July 1990 it was passed by the Legislature of the Province of British Columbia, and it was proclaimed into law in December of 1990. That was the time when I became the acting commissioner of conflict of interest. It was an acting rather than a full-time position because the House was not in session at that time. My position as conflict of interest commissioner was confirmed by a unanimous vote of members present in the House in the month of May 1991.

In a sense, under our statute, I wear three hats and I want to discuss each of those. I want to discuss at greater length than the others the first of those hats—if I may call it that—the disclosure responsibilities under sections 12 and 13 of our statute.

• 0940

Under the act in British Columbia, members are annually required to file with me a confidential disclosure statement in which they have to spell out the nature of the assets, liabilities, and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and any other information prescribed by the regulations—in which nothing substantial is added to that.

The first point I would make to you is that the reference there to what they must disclose is to the nature of the assets, liabilities, and financial interests. It does not have any reference to the value or the amount or the worth of those interests. I can tell you my experience is that I find that wording as it is to be quite satisfactory. As commissioner, I perhaps would find it somewhat uncomfortable if the members had to spell out their financial worth. In my judgment, it's the ownership of an asset that could trigger the possibility of a conflict, not the value or the amount of it.

I know your statute as drafted now does require the submission of the amount of assets, the value of them, the amount of income, and that kind of thing. We do not require that, and I don't find it is any impediment not to have that required. I know one of the big arguments is attracting the right calibre of people to public life when in effect you have to "bare" yourself to all and sundry. While that is so with what you own, it is not so with the amount of what you own. I would think if that continues to be a concern to you, as I gather it has been in some of the discussion that has gone on here, you might take a look at the requirements of the British Columbia statute in that respect and give some consideration to my view that I do not consider it an impediment not to require the value or worth of the assets to be shown.

Insofar as income is concerned, what has to be disclosed by the member is the sources of income. It is important for me to know from where they receive income. But the amount of that income does not have to be disclosed. And once again, I do not find that to be any impediment.

The disclosure statement that has to be filed not only deals with the nature of those assets, liabilities, financial interests and sources of income for the member, but it places the onus and obligation on the member to make the same disclosure for the spouse and minor children. I know from having read your deliberations this is a contentious matter here.

I have to tell you while I have witnessed a bit of kicking and screaming on this front, it hasn't been of serious or prolonged proportions. I have been through this exercise of going through the statements on two occasions, in early 1991 and in 1992, and at the end of the day I have not had any instance where the member has not been able to produce to my satisfaction what I require to know about the assets, liabilities, and so on of the spouse or minor children.

I realize the argument is there that this is an infringement on the spouse. I can tell you this. I happen to be married to a civic politician, and she had to cough up information on me. I guess I gave some thought to that requirement, but we knew that when she went into public life, and it has caused me no discomfort. But I understand where that other point of view is coming from.

I am going to make more extensive remarks in a minute or two about the evidence given to you by Paul Martin, MP, I think on April 9. I noticed one of the points he made, with which I agree, is that when you balance this position of the spouse to be his or her own person and not have to go along with this, I think he expressed that the public good outweighs that position at the end of the day. That would be my view.

• 0945

Our statute does not require any disclosure, at least in writing—let me qualify it in that way—by the spouse himself or herself. It's the member who holds the responsibility for reporting with respect to the family.

However, under our statute, after the disclosure statement has been filed, it's my responsibility to meet with the member and the spouse, if available, and go over the content of the form. We discuss it and I obtain any elaboration or greater particulars that I require. In that way I might have questions to put to the spouse.

I have not rigidly required the attendance of the spouse on every occasion if I did not see a particular need for it, having looked at the form before the meeting was arranged with the particular member. It's not something that I have insisted upon and in some instances, where the spouse is in far away places of our province, I have held my discussion with the spouse on the telephone.

On that issue, however, you may have some questions, I suppose. I concede, understand and appreciate that there are two sides, but it is implanted in our legislation. I must say that I have had the co-operation of all members and their spouses with respect to compliance.

The meeting that I am required to have annually under our statute is a very important one for building rapport with the members. I realize that my duty to meet with just 75 is something far different from the much greater numbers that there are in the combined House of Commons and the Senate. It would likely be an impossible task for one person to do the interviewing for those kinds of numbers.

I have, however, a second hat that I wear that I will discuss with you in a moment or two. This is the opportunity for members to come to me for opinions on problem areas with respect to conflict, as they see them. I found it very helpful to build that kind of rapport with the members. I think they more readily come to me and perhaps put their trust in me because of the fact that we have had one or more sessions sitting across the table and discussing their problems.

Having had that meeting with the member and the spouse, if available, then my responsibility is to file a public disclosure statement. That statement is filed with the Clerk of the House and becomes a public document. Under the requirements of section 13 of our statute, I must disclose virtually all that has been told to me in written and verbal form. There are some exceptions, such as the municipal address or legal description of the land that is primarly for residential or recreation purposes.

It's not necessary for me to disclose personal property used for transportation or for household, education, recreational, social or aesthetic purposes. However, beyond those exceptions of common everyday goods, I am required to disclose everything. The forms that they fill out for me are reasonably extensive but I boil down the information received to one, two, three, perhaps it spreads into four pages at the outset with a few members. I distill it quite succinctly.

The information is there, but I think I can fairly say that the production of the reports into the public domain, both in 1991 and 1992, have really in British Columbia been non-events. Before the forms are filed—each year I have filed them at the end of March—a number of media calls come in as to when these forms are going to be available. Once again, when they become public, very, very little interest has been shown in them. I know that there are fears that the details of people's ownership interests are going to be spread all across the front page of the newspaper. I can tell you that in British Columbia that has not happened, and that may be a tribute to some responsibility in the media. If there's a reason for it, the information is there to give what publicity to it is required. But it hasn't been a case of the media waiting to be able to print up sheets on everybody. It just hasn't happened.

• 0950

I don't see the system of full public disclosure changing in British Columbia. The way it has worked, it has been an expected and accepted practice and procedure. This system then, in our province, does work.

I'm conscious of the debate that goes on that you can't attract the required calibre of candidate to public life if they have to bare all this information to public glare. On that issue I have to tell you that I was much impressed with the

evidence given before you by Mr. Martin, Member of Parliament. In my judgment his evidence should be required reading for wavering potential candidates of calibre and substance for all political parties. I refer to his unqualified support for full disclosure, coupled with the role and performance of an ethics commissioner of high integrity in whom the public is going to have complete confidence. He obviously expressed his view that if you had those components, full disclosure, and an ethics commissioner of that calibre and, might I add, one who is possessed of a good portion of common sense... My experience is that, probably of all ingredients, is equal to or more important than any other for one who undertakes this position.

He takes that position, as I read his evidence, giving due respect to those concepts that I share, and he said this:

> Opting for public life should not entail turning your back on what you have spent your life building.

I certainly agree, and it's my view that legislation and requirements of legislation should pay due respect to that statement.

He said that strict conflict of interest guidelines are not an obstacle or an impediment for those seeking public office; rather, that they provide a degree of protection for all as they clearly define the parameters involved. He said he believes that protection lies in the public knowing. That is the way we have found it working in British Columbia and, as I say, quite satisfactorily.

The alternative to full public disclosure would be, I assume, some discretionary withholding authority or power vested in the commissioner. The only justification that I can see for any such withholding power being vested in the commissioner would be to attract and keep the calibre of candidate that you want in this office. But when I look at the very forthright way that Mr. Martin has put the proposition, I tend to the view that even that withholding power should be looked at by you with some caution, and before you put the brakes on full disclosure you should give consideration, I think, to what he has said.

With respect to the commissioner let me just say this. I notice that under your proposed statute, Bill C-43, it calls for a three-person commission. From my experience, not only in this position I hold, but having had some experience of sitting on boards and commissions of arbitration and that kind of thing over the years, I wonder whether this is the place for a three-person commission, or whether, if you can find the person of the kind of calibre that Mr. Martin has discussed, you should at least give some consideration to a recommendation that one person might be better fitted to do this job rather than three. I say that because the decision with respect to whether a conflict exists or whether it doesn't, and questions ancilliary to that, in the main is a judgment call, and a large part of that judgment call is based upon, as I've said, common sense. A three-person resolution to a problem is sometimes a consensus resolution, and while there are many places where a consensus resolution, which often has some compromise built into it... I don't think there's room for compromise in some of the kind of questions the commissioner has to answer, and I just wonder if the system mightn't work a little more smoothly if indeed the responsibility were held by one person. I leave that thought with you for your consideration.

• 0955

Let me move on to the second hat I wear, and then the third. I will not take nearly the time on these two that I have on the first one, relating to disclosure.

The second hat is an area you have discussed, I noticed in some of the transcripts. It relates to my availability to give advice to members of the House. A member may, by application in writing, request that the commissioner give an opinion and recommendations on any matter respecting the obligations of the member under the act. So any member can write to me and make that inquiry and I have a responsibility to give to him or to her my opinion on the question that has been submitted—assuming it has relevance to the conflict-of-interest statute. If I am of the opinion that a member has or may have a conflict of interest, I am empowered to make recommendations and specify the time within which they must be complied with. The opinion and recommendations of the commissioner are confidential, but they may be released by the member or with the consent of the member in writing.

An important part of that—and quite important, when you consider the third hat I wear, namely to convene an inquiry about a complaint of conflict of interest... The further section, when the member asks for an opinion of me...subsection 14.(5) says this:

> If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner...were accurate and complete.

I emphasize that because the third hat I wear is to hold an inquiry where I deem it's warranted if and when a member makes a complaint about another member being in violation of the statute. That is the third hat: to conduct such an inquiry. But you'll see the importance if what the person brings to me is a complaint relating to what the member has already asked for an opinion on. For my opinion to be binding, an opinion that there has not been a contravention of the act, I have to satisfy myself that what had been told to me when I gave that opinion under section 14 of the act at the request of the member was accurate and I had complete knowledge of all the facts.

Under section 16 I can hold an inquiry and then report to the House. I can tell you that in the 15 or 16 months I've been in this office—and I think this speaks well for the process in our province, now that we've turned the road and

we're coming to the "up" side of the mountain, if I can put it that way—I have not had one complaint made by one member against another about a possible violation. I recently had an inquiry from a member about some activities of another member, but it was not in the nature of a complaint.

So I've had no experience with that section. I've had no experience with the inquiry section. I just make reference to that, that if I do hold an inquiry because a complaint has been made, then my sole role is to report to the House and make my recommendations on what penalty should apply. But the application and a decision and a resolution on the penalty are for the House and not for me.

To run through the statute we have, it's a simpler and much shorter document than your statute. As I say, it seems to be working well, and I have optimism that within the framework of this statute and with the co-operation of the members we're on the road to recovery in British Columbia, which is one jurisdiction in the country where perhaps there was room for improvement.

• 1000

With that, I turn this over to my colleague from Nova Scotia. If you have questions for me in due course, I would pleased to be of assistance if I can.

The Joint Chairman (Mr. Blenkarn): Thank you very much. —Mr. MacIntosh.

Hon. Alexander MacIntosh, Q.C. (Commissioner, Nova Scotia Commission on Conflict of Interest): Mr. Chairman, I have had the opportunity of reading the minutes of your previous meetings. I am not one for repetition. I think everything that can be said has been said on the philosophy behind the need for a conflict of interest act, so I am not going to bore you with any more detail or my personal feelings. I adopt what Mr. Hughes has said.

We have a conflict of interest act; at least, it was formerly known as a conflict of interest act. It now has the more imposing title of the Members and Public Employees Disclosure Act. I have no idea why the title was changed from the Conflict of Interests Act. Perhaps my legislators' philosophy is that disclosure is the answer to this problem, such as it is.

Sometimes I think there is paranoia on the part of the public concerning any people who have authority over them. We must be very careful that we don't, as some have said, embark upon a witch-hunt that will really do damage to those of you who want to remain or others who may wish to try for the lofty position that you all hold.

The original act covered only members of the legislature. As you note from the title, it now covers members and public employees. Members include members of the executive council or, as it is sometimes known, the cabinet. There are different parts to the act, one part concerns members. As I say, "member" means a Member of the Legislative Assembly (MLA), including a member of the Executive Council. "Public employee" means a person employed by a department and includes a member of the board of directors or board of management of a department.

Part I applies to a member, a member's spouse, and dependent children. There are two disclosure statements that must be filed by the member; that is, his own and a second disclosure statement on behalf of the member's spouse and dependent children.

Much has been said, I noticed from your minutes, of having the spouse or the member file a return on behalf of his or her spouse. Like Mr. Hughes, I have had very little problem with that except on one occasion. I have heard a lot of rumbling about it, but we have dutiful spouses, I guess, in Nova Scotia, and each has given his or her spouse no problem with the filing of the statement.

There was one incident where the spouses were separated. I think, as Mr. Hughes has said, whomever you have as your commissioner, if he hasn't got common sense then I would say leave him behind. In this particular instance the spouse was separated. The non-member indicated that he or she was not interested in telling me what his or her assets were. I knew and found out there was no collusion between the two, and my advice was that if you can't get it, you can't get it. I did nothing further about it, although, the way the act is worded, it was a contravention of our act.

• 1005

Each member must file the disclosure statement in the month of June, and no amounts are required under our act. All he has to do with his investments, for example, is give the name of the company or the issuer of the bonds, but the amounts are not required. There are a lot of exceptions, which are more or less the same in all the acts, and I'm sure you've read them. He has to show his assets and his liabilities.

Part II of the act concerns political contributions and is the part of the act that is in the hands of our chief electoral officer rather than mine. I felt there could be some confusion and overlap between that section and my duties. From what I'm seeing, that situation seems to be arising.

We've had a lot to do with trust funds in Nova Scotia, and I'll speak to that in a moment. The proposal is now being made with regard to the so-called secret trust funds. The member must also file a disclosure statement each year showing the moneys he has received. Any amount over $50 is required to be disclosed.

Part III concerns public employees. I've had nothing to do with public employees up to the present time. Obviously my experience is nothing compared to Mr. Hughes'. I may well have matters arising from that in the future. Our act covers every member of the legislature, whether he's a member of the cabinet or not, and public employees.

On a personal point, I wrote to the Speaker of the House, to whom I report, and indicated I found my description under the act to be rather cumbersome and quite a mouthful. I had to describe myself as a designated person

under the Members and Public Employees Disclosure Act. I stumbled quite frequently when I told people who I was when I called them. They're proposing to change that in their amendments, so I'll be known as the conflict of interest commissioner.

There are some proposed amendments coming forward. The main one deals with trust funds established for political purposes but not controlled by the party, the member or an association. We have that situation in Nova Scotia and you've probably all read about it. I don't know how much trouble that's going to cause me, but I wait with bated breath on that one. As I say, these are proposed amendments coming forward.

I did have one allegation under the act of a contravention brought by one member of the House against another member. I had to dismiss the allegation because the act, at present, only refers to present members of the legislature. There was a loophole in the act and I could not embark upon any inquiry.

Under the new provision proposed by the government, the designated person has jurisdiction to inquire into actions or omissions by a former member or former public employee if the application or inquiry by the designated person commences within two years after the former member or public employee ceased to be a member or public employee.

There's a two-year period now that an action can be brought.

At times I feel my definition of spouse under this act is not as complete as it might be. It states:

> "spouse" means a person married to another person and, for the purposes of this Act, includes persons who, not being married to each other, live together as if spouses and have done so for at least one year.

• 1010

I think under some acts, as maybe yours provides, Ted, if they are separated by court order or by agreement, there's no need to file a disclosure statement on their behalf. Is that correct?

Mr. Hughes: That's correct. We also give them two years together before they fall into the category of a spouse. Maybe they need it in our province; I don't know.

Mr. MacIntosh: I think they need something more in ours concerning that spouse situation because the example I quoted to you was a separation. It had been going on for more than a year and there was no way that person was going to reveal his or her assets to the other spouse, the member. I know you've all probably all read this act as good members of our committee. I don't want to bore you by going into much more detail. As far as the amendments are concerned, clause two provides—these are proposed; they haven't passed as yet—that where a trust fund is established for political purposes but is not controlled by the recognized party, electoral district association or candidate, the names of the contributors to that trust or fund must be disclosed when payments are made from the trust fund.

This is the secret trust funds that are supposed to be down there and they're causing quite a furor.

This will apply to all payments from a trust or funds made after the coming into force of this amendment regardless of when the contributors pay the money into the trust or fund.

That is it in a nutshell.

Mr. Boudria (Glengarry—Prescott—Russell): I want to welcome our guests. I note from the briefing notes given to us that in one case, namely, British Columbia, the disclosure rules for the spouse are the same, or at least they appear to be the same, as the disclosure rule for members. Is that correct?

Mr. Hughes: That is correct.

Mr. Boudria: I also note that in Nova Scotia a member has to comply with public disclosure and a spouse only with a confidential disclosure.

Mr. MacIntosh: That's right. The members' disclosure statement—I'm sorry I missed mentioning that—is public. I displayed all the returns on a certain day, notified the press, and they were there and looked at them. After that day nobody had any interest in them, frankly. Not one member of the public, other than the press, has been in to see those statements. As far as the spouses' returns are concerned, they're in my safe. Nobody saw them but me.

Mr. Boudria: If the spousal return is confidential—I'm just trying to reason this out here—and they have joint assets together, automatically I guess you know what's in one when you know what's in the other, don't you?

Mr. MacIntosh: If they're shown as joint assets, they'd have to know.

Mr. Boudria: One of the problems we've run across here is that there is a group of people, who shall remain nameless, and they're not too crazy about having to register.

Mr. MacIntosh: They're not alone.

Mr. Boudria: Yes, that could be, but in your opinion, I ask both of you, can a conflict of interest code of any kind work for legislators unless it covers the assets of the spouse?

Mr. Hughes: I think it would be very difficult. We all know that there's an intertwining of assets in a household, and I think my job would be much more difficult, to be able to give the assurance to the public that they want from a commissioner, without knowing what the state was of the spouse's assets.

• 1015

Mr. Boudria: Would you concur, Commissioner?

Mr. MacIntosh: I fluctuate on this. I have a very independent wife, for example, and I know what she would feel on these matters. If you have a commissioner with some common sense and he looks at the returns, he should be able to indicate whether a potential conflict of interest is involved there. Let him decide whether there should be disclosure or not. Just willy-nilly to—

Mr. Boudria: I am sorry. Perhaps I didn't ask my question clearly. I didn't mean to ask whether or not it was easier for the spouse to have public disclosure, but rather whether a code can actually work at all unless there is some sort of disclosure to the commissioner, whether public or not.

Mr. MacIntosh: A code, as opposed to legislation?

Mr. Boudria: Whatever we have. It doesn't really matter; the principle is the same. Can conflict of interest rules actually work, in your opinion, unless both the legislator and his or her spouse disclose the assets to, at the very least, the commissioner in the respective jurisdiction? I guess that is put a little clearer, and I think that is how Commissioner Hughes understood the question.

Mr. MacIntosh: You are using the word "code".

Mr. Boudria: Well, "rules". It doesn't make any difference.

Mr. MacIntosh: As opposed to legislation?

Mr. Boudria: No, that is irrelevant. Frankly, right now we have—

Mr. MacIntosh: You would pay more attention to legislation than you would to a code, wouldn't you?

Mr. Boudria: Well, perhaps. Right now we have a code. But that is not the point. What I am asking you, sir, is whether or not you think rules would work for this purpose if they do not also cover the spouse.

Mr. MacIntosh: There is a danger they wouldn't, I quite agree.

Mr. Boudria: About the disclosure of assets, in neither case are you concerned that your respective legislation does not cover quantities of assets. Rather, you have a description of assets, but without either monetary values or quantities, if you are looking at stocks and bonds and that sort of thing. Can I conclude that does not present any problem at all in either case? I know, Mr. Hughes, you have addressed that part and you have said that is just fine with you.

Mr. Hughes: That's right. But let me add this. In the discussion I had with the member, sometimes it might be relevant for me to make some inquiry. But the fact that it doesn't have to be presented has posed no problems for me at all.

Mr. Boudria: There is another point there I hadn't thought of. Do they not have to register the quantity of assets at the very least with you, and then you make a public declaration that removes the quantity?

Mr. Hughes: No.

Mr. Boudria: I see. None at all?

Mr. Hughes: No, the words of the act are that it is a statement "of the nature" of the assets.

Mr. Boudria: I see. The quantity is not revealed even to the commissioner in a particular case.

Mr. MacIntosh: It is the same with us.

Mr. Boudria: I see. So there is no danger of the commissioner making a mistake and somehow releasing that information. You don't have it to start with.

Mr. Hughes: That is right; and I have found that no impediment at all.

Mr. MacIntosh: In fact, some of our members haven't read the statute and they put the number of shares they had in various investments.

Mr. Boudria: But it is not a requirement?

Mr. MacIntosh: It is not required.

Mr. Boudria: A further question on this business of dependants, because of course there is another possible complication there. How does one define a dependant in your respective legislation? For instance, some cases are rather obvious. One's offspring, living in one's own home and financially dependent on the parent, is a dependant. But there are cases in which it is potentially not quite as easy. Is a mature, young adult out working on his or her own but living at home a dependant or not? There are a number of quasi-dependant situations. How does one define "dependant"?

• 1020

Mr. Hughes: Well, the word "dependant" doesn't appear in our statute, but the disclosure that the member has to make deals with his own situation as well as that of his spouse and minor children.

Mr. Boudria: Minor children? Is there—

Mr. Hughes: But then "child" is defined to include a person to whom a member has demonstrated a settled intention to treat as a child of his or her family.

That is in addition, but the overall answer is, I guess, that the child has to be one of minority under the law before any requirement cuts in. But other than spouse and children in that sense, dependants are not otherwise mentioned in the statutes.

Mr. Boudria: Is that the same with Nova Scotia?

Mr. MacIntosh: That's right. Our definition is as follows: Dependent child means a child who is under the age of majority or, although over the age of majority, unable by reason of illness, disability or other cause to withdraw from the charge of the parents or provide himself with reasonable means, and includes a child 24 years of age or younger who is attending a post-secondary educational institution.

Mr. Boudria: I see. That definition is a bit more complete.

Mr. MacIntosh: Yes.

Mr. Boudria: I gathered that in your case, Mr. Hughes, you have a role of what we have referred to in this committee as a jurisconsult. You give advice and that advice then—provided that the information is substantially the same, or at least enough of it is the same to render the same decision—is binding upon you in the future.

Now, you've noticed that our bill doesn't do that. It actually does the opposite. It states quite clearly that even the previous advice given is not binding at all. What is the opinion of both of you on that particular clause of our bill?

Mr. Hughes: I would find it very difficult to have given the definitive ruling on a particular set of facts and then be asked subsequently to hold an inquiry as to whether or not those facts on which I had opined were in fact a conflict.

Hence, I take some comfort from the fact that in our statute it says that if I have found in an inquiry being made by me that the member has not contravened the act, and the set of circumstances and facts that he has put in front of me do not constitute a violation of the act, then, so long as the facts presented by the member were accurate and complete, that brings it to an end.

As I told you, I've never had this situation arise yet because I've never had a complaint. But if the facts that are brought to me in the form of a complaint are identical to what I've already given an opinion on, I take some comfort from the fact that I can say, here's the opinion I've given and it's a final opinion. There would be no inquiry.

If some new facts are brought to my attention that weren't put in to the hopper to arrive at my decision, then I can carry on with a new complaint.

But I think any person in the commissioner's role would be in a most difficult position if he gave a definitive opinion and then had to reassess the same question because someone else had raised it with him by way of a complaint against another member. How could that "complainor" expect to get an objective answer? I don't think it's possible.

So if the same person is going to give the opinion and ultimately conduct an inquiry, I think you have to have the kind of safeguard in the statute that's in ours.

Mr. Boudria: Mr. MacIntosh, do you agree?

Mr. MacIntosh: I do not have in my act the situation that Mr. Hughes has, whereby people come to him and he interviews all the members and so on. I suggest that should be in our act.

Any ruling I have given is merely an opinion on a certain set of circumstances. That's all I can do. I'm subject to appeal.

I note that in our act—I believe yours is member against member, isn't it?

Mr. Hughes: Yes. Only a member can lodge a complaint. A member of the public cannot do that. That has been a subject of some controversy. If a member of the public has a legitimate complaint about a conflict on the part of a member in the House, I can't believe that a member of the opposition party wouldn't be quick to pick that up and carry it into the House. So I've never been unduly concerned about the fact that a member of the public can't come directly in.

Mr. MacIntosh: A member of the public can come in under our act. It says "upon the application of a person". So anybody can bring an allegation against a member or a public employee.

Any time I've given an opinion, as I have, I've said: That's my opinion; you may act on it. If I'm wrong, I'll back you up. That's all I can really do.

Mr. Boudria: I see. But in your case the act doesn't have the specific direction the—

Mr. MacIntosh: No. I've been offering to do what Mr. Hughes is doing, without it being in the statute. I like people to come to me with their problems ahead of time so we can discuss them. I'll give them an opinion in writing, and I say I'll stand behind it.

Mr. Boudria: Without putting words in your mouth, can I gather that you would like to have the act—

Mr. MacIntosh: Yes. I've asked our legislative committee to consider it.

Mr. Boudria: Thank you, Mr. Chairman.

Mr. Breaugh (Oshawa): I think many of us now have looked at the Canadian experience in this. There is a pattern that there is a law, and the law is a fairly clear and straightforward attempt to be specific, not to paint with a broad brush. If the commissioner picks up a need to redefine, to clarify, there's a mechanism in most of them now that allows the commissioner to report directly to the legislature some way of getting the law changed in a fairly expeditious manner.

How important is that when you're trying to adjudicate and to comply with the law, you find there's a need to change the wording in the act to provide for some clarification? Is it possible in both your cases to make a recommendation that the law be changed and that there's a recognized mechanism such as a legisltive committee, which then reports to the House?

Mr. Hughes: In British Columbia the access is readily available to me. I'm privy to the fact that there's a bill coming to our House within the next two or three weeks with a number of amendments, and I think I can classify them as housekeeping amendments, some of which I personally have recommended. Let me give you an example. There's no provision in our statute for continuous disclosure of a material change in circumstances. It is in your bill. I have recommended that change and some others.

All the changes I've recommended are going to come into the House in the next two or three weeks, along with some other housekeeping amendments the government party has decided it wants in. I am privy to those as well. It would not be proper for me to indicate what they are. But certainly both governments—and I have now, in this short time, been operating under two governments—have been interested and have given me their full co-operation with respect to any changes I think are necessary.

Mr. MacIntosh: Our act does cover that problem. Any new acquisition or any disposition or change must be filed in a disclosure statement within 90 days.

Mr. Breaugh: I guess the purpose of providing some direct mechanism for changing the law is it would be pretty embarrassing to get in the middle of a hearing and find that your hearing is basically about someone playing word games, or redefining, or trying to get outside the definition. If you don't provide a direct mechanism for covering off those situations, no one would want to have a commission that says, we're sorry, it's morally wrong, the person is absolutely corrupt, but according to the strict wording of the act I work with, we let him off the hook.

Mr. MacIntosh: They're proposing something in our new—

Mr. Breaugh: Let me pursue one other point with you. It seems to be a common element in the ones currently functioning in Canada. That is that this is not designed to be a complicated exercise with a huge staff. It works well it seems where there is really one person advising the members, and a relationship develops there so they feel free to get advice and he feels free to advise the legislature on changes that might be necessary.

• 1030

But I want to go at the question again. Mr. Hughes, you mentioned that it ought to be one person, and I can think of a good argument that I don't want three people giving three personal opinions on a matter to members of the House of Commons. I would like to have one person, but I have this problem of the House of Commons and the Senate being a rather larger body than most of our jurisdictions. That might be quite a task to lay on the shoulders of one person.

I can think of ways to ease the burden just a touch and that would be to broaden a bit, I suppose, the reporting periods so that reports don't have to be put in quite as quickly as you might be able to do in a smaller organization. A couple of other things might also be done.

I'd like both of you to elaborate on the importance of one individual, one man or woman, who advises the members, who tables the reports and who in a sense develops some expertise in that regard, so everybody gets the same advice in the first place and everybody's expected to conform to the same advice in the second place.

Mr. Hughes: At my request, because I wanted to be free to do other things, I took this position on what I describe as a half-time basis. Sometimes during the year it's much more than that. At quiet times it does not come up to that and that suits me perfectly. At least on a half-time basis, I would not want to be doing this with more than 75 members.

I would think if you had one commissioner here, that person would have to have two, three, four qualified assistants who would have to do some of the interview work on his behalf and bring him or her recommendations. I think it would be virtually impossible for one person to do all that.

When I referred to a three-person commission, I didn't have so much in mind three people rendering independent opinions to the House of Commons or to the Senate but some of the problems in those three persons reaching a consensus on what the opinion should be. My preference would be to have one commissioner with such support staff that enables him or her to get all the information and write a definitive statement with respect to each member or each problem. I think that would work in the most advantageous way.

I can tell you that I operate with a very small staff, and I know my colleague will tell you he certainly does, and you've heard from Greg Evans of Ontario who does. I have a half-time secretary and we run our office on a budget of $200,000 that includes money for consultation fees and contracts I let for opinion work, research and that kind of thing. So it's a pretty small operation.

Of course with the number of members you have in the House of Commons and Senate, you can't get away on that small a budget or staff, but I don't think it has to grow into an uncontrollable arm of the bureaucracy.

Mr. MacIntosh: I would agree with those comments. Whether one or three is the best is something that has been much debated. I go back in my history, if I may, way back when I did a lot of labour work and I was, as my curriculum vitae will indicate, a coal umpire between the United Mine Workers of America and the Dominion Coal Company. I was a one-man umpire.

They got fed up with having a board of three settling their disputes. They figured it boils down to one anyway. The one appointed by the union goes one way, the one appointed by the company goes one way, so it's the man in the middle who has to make the decision. So they appointed me as a sole umpire. After two or three years I think both of them got fed up with my decisions, and they went back to three. So there are pros and cons as to whether there should be one or

three. But as a former judge, I think if you have the material before you and you have a good research staff—I think that's the important thing—I quite agree with Ted that one person could do the work, providing you have the confidence that this commissioner from his experience and background will make the right decision, provided he has that staff.

• 1035

Mr. Breaugh: So, just to pursue it a bit, the nature of the work doesn't really lend itself toward a large group of people participating in this exercise. I would argue that basically, although you might say that the federal government will never do anything in its lifetime with two and one-half person years assigned to one job, the critical point is that the commissioner ought to be the same commissioner who advises and receives the information from everyone. There may be an argument that a bit more support staff is necessary here, but I think you both said some interesting things about the nature of the task that you've been given. There are times when there's a great deal of information flowing through your hands; there are also times when that work is basically done for a while and the nature of the job you do changes substantively. I think it would be wise not to gear up toward the peak period, but to try to spread the workload a bit better.

Mr. MacIntosh: I'm on the same basis as Mr. Hughes. It's a part-time job for me. I have a part-time secretary and an office. That's it. But if I had to embark upon an inquiry, I would have the authority to hire staff. The act gives me the authority to do that.

Mr. Hughes: I would agree with the comment you made, sir.

The Joint Chairman (Senator Stanbury): First, I would like to apologize for being late. I am sorry, because that left me without full knowledge of what you were saying. I did understand you, Mr. Hughes, a few minutes ago to say that you were concerned about being in a position in which you had given an opinion, having it challenged, and it going into an investigative stage.

I've been concerned all along about one person doing both the advisory function and the investigative function where it's necessary. I'm wondering whether you might think a commission or commissioner, another person, another body, might be set up on an as-required basis to do inquiries so that the commissioner himself is left with the job you're doing mainly, which is advising and giving opinions as to what people should do.

Mr. Hughes: I think there could be merit in that. As I say, in our jurisdiction that person, or persons, who could be brought in on an ad hoc basis wouldn't have been very busy up to this time, and ideally you never would be busy. But, if it weren't for the protection that my ruling is final and absolute, providing I was operating with an accurate and complete set of facts, I think it would be impossible for the same person to have given the opinion and then to conduct an inquiry. I think there is merit. Certainly the commissioner who deals with disclosure and builts a rapport with the members would be the one who gives the opinions, and if you're going to have another party involved, I would think it would be to conduct an inquiry as and when that should become necessary.

Mr. Layton (Lachine—Lac-Saint-Louis): The C-43 legislation in front of the committee expresses itself on trusts, blind trusts, and I notice that the B.C. experience is to provide for them. Are there extensive uses of blind trusts in the B.C. Legislature?

Mr. Hughes: No, sir. I don't believe our statute has provision for blind trusts. The only reference is in section 8 of the act. There is a prohibition on members of cabinet carrying on a business when the activities of that business are likely to conflict with his or her public duties. One of the ways the member can retain his or her interest in the business is to place the business in the hands of a trustee. That provision, and the terms are there, is that the person has to be at arm's length and there can be no consultation and so on. It's not a blind trust, but is a trust that can be put in place so that the business operation can in fact continue and doesn't have to be sacrificed on the member going into cabinet. There's no provision in our statute for a system of blind trusts, and I frankly haven't had any experience with them.

• 1040

Mr. Layton: So it really becomes, in a sense, a management trust, but the member must be perceived as not having a direct influence on the operation.

Mr. Hughes: Yes. The terms are that the provisions of the trust shall be approved by the commissioner—and I've had occasion to approve one such trust—the trustees shall be persons who are at arm's length from the member and approved by the commissioner; the trustees shall not consult with the member with respect to managing the trust property; and the trustee shall report, in writing, all material changes in assets, liabilities or financial interests contained in the trust to the member and the commissioner forthwith after the changes have occurred. So it's a management trust in that sense, for that limited set of circumstances.

Mr. Layton: It doesn't apply—

Mr. MacIntosh: We've got a lot of talk about trusts, but not blind trusts.

Mr. Layton: Has the recusal option or alternative been adopted by the legislators in either of the two jurisdictions? Presumably, if, after discussions with yourselves as commissioners, there is a possible conflict or an apparent conflict, recusal or abandoning the investment might be effected, if the minister wishes to serve.

Mr. Hughes: I've had occasion to have those kinds of discussions with members of cabinet and we've always been able to resolve it satisfactorily. In some instances disposition of the asset has occurred; however, I have always taken pains to see if that can't be done without economic hardship, or economic loss, if you like, to the person. . .and sometimes have given—not that this a very frequent occurrence—three or four months to allow something to be worked out. I think I can fairly say that, on the few occasions when this has arisen, my advice has always been accepted and it has always been possible to make the disposition in such a way that economic loss did not occur to the minister.

Mr. Layton: It's still relatively new and was, as you mentioned in your remarks, the result, as it is in the case of Bill C-43, of a reaction to a situation to try to clear up public concerns. Is it being successful? Is there enough evidence yet to suggest that the public is responding positively to the legislators' efforts to run a clean ship?

Mr. Hughes: I don't know if any public pulse has been taken; but, as you may have noticed in the remarks I made to the members of our House and some others earlier this month, I repeated what the premier said when he and I had a public appearance in the first month of his tenure, that he was bound I was going to become the "Maytag repairman", without anything to do. That's the wavelength the government is on, and I've had full co-operation from all opposition people in the current Parliament. So I'm quite optimistic that we are going to be seen as doing the job in the way you suggest, sir, in due course, but I don't think there has been an actual public pulse-taking up to this time.

The Joint Chairman (Senator Stanbury): Just to follow up on that, Mr. Hughes, we received a copy of the speech you gave. I think there was a speech or an article; in any event, I thought it was extremely good. It seemed to me that you were recognizing that one of the roles of the commissioner is education of the public—

Mr. Hughes: Yes.

The Joint Chairman (Senator Stanbury): —and the explanation of what is being done. It seems to me that this is an extremely important element of what the commissioner or whatever agency we set up is going to have to have.

Mr. Hughes: Yes, and I'm making myself available to service clubs and subsections of the Canadian Bar, and those kinds of things, who want to hear me on the act and how it's working. I think that message is getting out across our province gradually, but I'm endeavouring to fulfil that role.

• 1045

The Joint Chairman (Mr. Blenkarn): Well, I congratulate you on that speech. A most honourable profession. I thought it was extremely well done.

I have a question about family businesses. What do you do when a member and his family have been involved in a family business for some time? How do you cover that? You can't cover it with a trust because obviously people do happen to occasionally talk to each other. People know what their kids and their brothers and sisters are doing.

Mr. Hughes: I'm trying to think how the conflict might arise. I can tell you one situation in which I have dealt with family businesses.

Under a section of our Constitution Act, and I think there could be reason for rolling us into the Conflict of Interests Act, a member of the House is prohibited from receiving any remuneration from the government for goods or services delivered to the government. That applies not only to the individual but to any limited company where the member, in association with his spouse, children or other relatives—I think it goes a little further than that—has 30% control of the voting stock of the company. I have had instances in which the member has had to divest of his or her interest in the company by passing all of it over to the spouse so the spouse could continue to do business with government. There are two members in the current legislature whose companies have ongoing business dealings with the government because the member has stepped out entirely at my request. Of course if they didn't, they would be in violation of the act. When you are in violation of that section of the Constitution Act, the price you pay is the vacation of your seat, so it didn't take much urging on my part. But in those two instances the member has simply passed his or her ownership interest over to the spouse.

The Joint Chairman (Mr. Blenkarn): How does that get you out of the conflict? Isn't that the whole point of it? Why disclose the spouse's interest if I'm in conflict but I just turn over the assets to my spouse? Then the company can continue to deal with the government and I of course don't benefit, do I? My spouse benefits.

Mr. Hughes: But that relates solely to doing business with government; i.e., delivery of goods or services.

The Joint Chairman (Mr. Blenkarn): The fact is that under the statutes of British Columbia, if there was a breakup of the marriage, the assets would be divided 50:50 between the husband and the wife, wouldn't they? So then presumably, every time my spouse makes a profit, I make a profit.

Mr. Hughes: That's the way the Constitution Act is constituted.

The Joint Chairman (Mr. Blenkarn): Yes, but how does that get over the problem? In terms of an honourable profession, is that just a ruse to get around the problem of an act that says you can't deal with the government?

Mr. Hughes: But I'm talking about the limited situation of doing business with government. Your question may have been broader with respect to other areas of conflict. I've only been involved with family members in business doing business with government.

Maybe you're saying the law should be that no member of the family can do business with government. If that's your view, I understand that, but the view of the legislature in British Columbia is that a spouse should be allowed to do business with government providing the member has no association with that business. That's the law.

The Joint Chairman (Mr. Blenkarn): So it's okay if your spouse owns the business and does business with the government but you can't.

Mr. Hughes: That's right.

The Joint Chairman (Mr. Blenkarn): So why would you want to disclose a spousal interest? Why would you bother?

Mr. Hughes: You must appreciate that is in the narrow issue of a company doing business with government. Out of our 75 members, only two have a family business that is doing business with government.

• 1050

The Joint Chairman (Mr. Blenkarn): How do you prevent that from being a conflict of interest? It seems to me that it's in the interest of a minister to make sure his family business runs successfully, and if he can continue to do business with the government by having his spouse own the shares, that sounds to me like a pretty good deal for him.

Mr. Hughes: That doesn't fall within the definition of conflict of interest in our statute.

The Joint Chairman (Mr. Blenkarn): Oh, that's not a conflict?

Mr. Hughes: Not under the conflict of interest statue. That is not a conflict as defined.

M. Prud'homme (Saint-Denis): M. Champagne a une question sur le même point.

M. Champagne (Champlain): Si, comme vous le dites, le député fait complètement sa divulgation et qu'il laisse toutes les parts à son conjoint, quelle est l'utilité de demander au conjoint de faire une divulgation publique?

Mr. MacIntosh: I will answer something on this point. Where a member's spouse or dependent children have a contract or agreement with the Government of Nova Scotia or with any minister or department thereof, the contract or agreement shall be disclosed by the member, unless the contract or agreement has been awarded by public tender. That doesn't close the door very hard.

The Joint Chairman (Mr. Blenkarn): Especially when you can write the terms of the tender, eh?

Mr. MacIntosh: I would presume he'd stay away from that.

Mr. Hughes: The question was: what is the purpose of disclosure—

Mr. Champagne: For the spouse, if the MP is okay when he has sold everything?

Mr. Hughes: No. No. I don't say the MP is okay when he has sold everything.

Mr. Champagne: He is not in conflict of interest, you said.

Mr. Hughes: I said insofar as the spouse or the spouse's company doing business with the government is concerned. But it doesn't go beyond that. I'm not talking about the whole breadth of possible conflict but only the isolated situation in which a company, or an individual who is married to a member, can continue to do business with government. But the matter of disclosure and all of the assets and all of the conflicts that are possible out of that still become relevant for disclosure. I don't back away because of the way that section of our Constitution Act reads. I don't back away from the need for the disclosure to be there with respect to assets and liabilities of both member and spouse—not at all.

Mr. Champagne: Why ask for disclosure for this particular case when the MP is okay? Why ask for it? There is no conflict of interest. He has no jurisdiction in this company. Why ask for public disclosure for this?

Mr. Hughes: Because there's no half-way measure in what has to be disclosed. With respect to both member and spouse and minor children it's full disclosure. There's an appreciation of what that other law says about an ability to do business with government, but there's no provision in the statute for half-way disclosure, nor do I think there should be.

Mr. Bird (Fredericton—York—Sunbury): On the same point, if I may with the permission of my colleague, Mr. Hughes, you described a trust that I thought was quite rational and workable. Even though the business is owned by the spouse of the member, if there were a need for a trust as an interface between the member and the business, why would the trust that you used not pertain to that business as well? I mean, the fact is that it is the wife who's running it. Mr. Chairman, we're getting back to this question here about whether or not it is wrong to be in conflict, or whether it is wrong not to disclose the conflict. If the conflict is disclosed and it is served in an appropriate manner, then there is nothing wrong with it. We seem to drift back every so often to the inference that to be in conflict is wrong, when in fact what we're saying is that conflict is satisfactory if it is disclosed and managed properly.

• 1055

The chairman has described where the wife and children were running the MP's business. First of all, it was disclosed. I'm not even sure there is a need for a trust. If it's deemed to need a trust, if the trust is at arm's length and is satisfactory to the commissioner, then even though the member's family is running that business, surely that trust undertaking prevails.

The Joint Chairman (Mr. Blenkarn): Why would you have a trust then?

Mr. Bird: Excuse me?

The Joint Chairman (Mr. Blenkarn): Why would you have a trust?

Mr. Bird: I'm not sure that you would have a trust.

The Joint Chairman (Mr. Blenkarn): If you had a trust it would be stupid trust to have because, after all, all you want to know about the business you gather from pillow talk, as with Stevens.

Mr. Bird: That's the point I'm trying to make.

Mr. Hughes: You wouldn't have the trust under our statute unless the cabinet member had an interest in the business and the activities required of him were likely to conflict with his public duties. If the business were solely owned by the spouse and/or children, there'd be no need for a trust.

Mr. Bird: What if the company owned and managed by the spouse and the family was doing business with the government and the member's duties conflicted? I suppose in that case it may very well be that you would require divestiture by the spouse or her interest would be placed in the trust. That is a situation almost incapable of solution, unless the disclosure is deemed to be adequate.

Mr. Hughes: I think that's probably correct.

Mr. Prud'homme: One of my experiences as an older parliamentarian—older in many ways—was to see in effect meetings of speakers in the world. I'm going to go around for a moment. Now we have an association of clerks of the House of Commons and the legislature. The reason is very simple. Each one can draw from another's experience, such as with various clerks in Canadian legislatures and in the Commonwealth Parliamentary Association, which is a very important organization. Do you have a similar organization?

Have the 10 or 12 of you ever met together in order to have a kind of a consistency across Canada? I don't mean to say it should come from Ottawa. I'm tired of this "father knows best" belief that lives in Ottawa only. Could you draw from each other's experience to have a kind of consistency across Canada? I don't see why in B.C. you're allowed to do this, but of course in another province you're not. We could have federalism in reverse and see what the 10 of you could come up with. You could say: "This is the best way to go". Instead of us saying: "Now Ottawa has spoken. Why the hell don't you do the same?" Of course, we have done nothing here. Do you have that kind of meeting?

Mr. MacIntosh: Yes, we have. Mr. Georges Tsaï, your federal conflict of interest commissioner, called a first meeting of the different commissioners of conflict of interest across Canada. Actually there are only three of us, Mr. Hughes, Mr. Greg Evans and myself.

Mr. Hughes: And New Brunswick.

Mr. MacIntosh: And New Brunswick. Judge Stevenson does the conflict of interest work there. We met in Victoria and formed an association of the commissioners, known as COIN.

A voice: Conflict of Interest Network?

Mr. Hughes: Yes, it is.

Mr. Prud'homme: Remember the Coyne affair.

Some hon. members: Oh, oh.

Mr. MacIntosh: C-O-I-N. With that view in mind of exchanging ideas, any time Mr. Hughes renders a decision he forwards copies of that decision to the other commissioners and we all do the same. We'll try to establish some consistency as you suggested.

• 1100

Mr. Prud'homme: Are your political masters—I hate the words—aware there may be a movement or a suggestion that amendments should take place in all the legislatures? I was very impressed by our own, who appeared here. I think he is in the room, and he is doing a good job. I am glad he took the initiative of calling on you all to have that meeting. Is there any pending legislation, have any drafts been submitted to all legislatures, so as to have consistency across Canada, or are you in the talking era at the moment?

Mr. Hughes: We have had only the inaugural meeting of COIN, and that was in February.

Mr. Prud'homme: That's good. I didn't know about it, and I am very pleased.

Mr. Hughes: We are going to get together in September. Once you said Georges Tsaï was here, that told me he likely has with him the new commissioner from Alberta, who was only recently appointed. We are going to meet him over lunch. I have not done that yet, so I assume he is also in the room today. So we are a growing number.

What I think you are getting at, sir, is perhaps the desirability of some uniformity in the legislation.

Mr. Prud'homme: Exactly.

Mr. Hughes: I think that is something that, as we grow and spend more time together, we could productively put our minds to.

Mr. MacIntosh: For example, as I indicated to you, I have already suggested to my legislators having some of the provisions that are in the B.C. act in our act. It now lacks them.

Mr. Prud'homme: Good.

Secondly, did you encounter, as we did and will again here, ferocious objection by spouses' associations? I am still waiting. Mrs. Maureen McTeer indicated to me she would have been more than happy to appear. I don't know what is going on behind the curtains, but it seems to be a problem. I know she would like to appear, but it seems some people do not like it.

I share her opinion. In modern times, the modern era, a spouse. . .and for a while longer the majority of spouses will be wives. Hopefully it will come about faster that there will be more husbands who will qualify as spouses of a minister or of a member. But women are no longer, as we say, flowers on the lapels of their husbands. They are individuals. They are very independent-minded. And I have to listen to them. Without quoting some of them in particular, or the one I mentioned, they think it is totally against the charter on human rights, which allows you total freedom of action, etc.

Have you encountered that in your own respective two legislatures in your dealings with the spouses—this reluctance to be considered as someone who should totally divulge?

Mr. MacIntosh: In my situation I have had no objections except for that one where the parties were separated and the non-member refused absolutely. As I said, I felt there was no collusion, so I hope I applied some common sense, and I said, all right, there is nothing you can do about it, so forget about it.

Mr. Prud'homme: Good. Willingly or reluctantly?

Mr. MacIntosh: I don't know what happened behind the scenes.

You see, it is the member who fills out the form himself. He could have—

Mr. Prud'homme: Oh, the master still fills out the form.

Mr. MacIntosh: The member fills out the form. He fills out his own and he fills out his or hers—the spouse's.

Mr. Hughes: Maybe what you are forgetting, sir, is that we are quickly moving into an age—

Mr. Prud'homme: Oh, I forget a lot; I am getting older.

Mr. Hughes: —in which a lot of the spouses are on the male side of the spectrum. So it is not just women spouses who have some interest in this subject. It is the male spouses as well.

Mr. Prud'homme: I just mentioned that. The world is changing. We are not there yet, but I could imagine now we are trying. . .my party, anyway, is trying very much to attract prominent, and less prominent, women. Some of them say, well, my husband is a little reluctant.

I say it openly, because I'm not going to give names, but it is a modern problem that we have to tackle. We have not addressed ourselves to modernity, and a lot of women who now should be or are considering coming into politics say, no way my husband would ever accept it, because we heard there's a conflict of interest law coming and my husband, as you so well mentioned, who would be qualified as a spouse, would have to divulge either completely, publicly or semi-privately, and he/we won't.

It's a modern problem. We must attack it and we must have an answer.

Mr. Hughes: It is, and I hope those looking at it in that way will read the statements made to this committee by Mr. Martin. He addressed the spouse issue and said, at the end of the day—and these were his words

> . . .while I understand the arguments against having a spouse being required to disclose assets, the public's right to know is greater.

That accords with my view of the matter.

In answer to your specific question, it may be because I don't think there's any organized legislative spouses association in British Columbia that we haven't had representations from the group as you have. I'm not sure they all like this, but like my colleague from Nova Scotia, I haven't had any serious problem of people declining to make the revelation.

Mr. Prud'homme: Well, thank you very much. I will just conclude by saying we received from our staff a very good chart. I still want to add Quebec to it to have a good flow. If there's nothing, there's nothing. But I see here full confidential disclosure. As for your province, it's full confidential disclosure.

But people are quite mixed up when we say full disclosure. In the definition of many people full disclosure means, oh, I'm going to know. . . Many of our witnesses, starting with Mr. Sharp, said, well I don't see why we should titillate. I learned a good word, by the way, because it could be used for many other things on the Hill, but if it's only to titillate people, to know all—I'm going to see what my member or his spouse is worth and all that, I'm making a lot of movement myself.

I was against it because I believe you don't legislate morality. You're either honest or you're not. But probably I'm *dépassé*, so I'm ready to go for full disclosure. That may be quite a shock for some of my colleagues, but before doing so I would like to have a good definition of full disclosure.

I learned in Australia, disclosure qualification and quantification. So we have your Ontario equivalent, your gentleman judge, Mr. Evans, gave us a good example of Mr. Peterson. That's how some people got titillated because Madam Peterson seems to have five pages of... But at least—

The Joint Chairman (Mr. Blenkarn): Mr. Peterson will be here next—

Mr. Prud'homme: Well it's a good example.

The Joint Chairman (Mr. Blenkarn): You can ask him that then.

Mr. Prud'homme: Except no quantification. Personally, I'm satisfied. It's a hell of a big step. I should ask the question and I conclude by thanking you. Is it enough in your view if we were to go to total full disclosure in the definition of qualification or is it essential that on top of qualification, I have to say I have chaired the following banks, I'm a director of this, this, this? Should this also include the number of shares and all that? That is where the ultimate reluctance will be.

People are already taking a hell of a big step by saying, okay, let's go for disclosure, but is it essential in a modern life, with all the problems this could create for children—kidnapping—to know who is worth what? Is it essential? I don't know and I trust you, a prominent judge, to enlighten me.

Mr. Hughes: Well, I've indicated that in British Columbia I have found it to be an entirely satisfactory arrangement without the requirement of disclosing quantity or value.

Mr. Prud'homme: Thank you.

• 1110

Mr. Bird: I wanted to pursue this question a little bit more, Mr. Chairman. In our discussions, over the past few weeks, one possible approach to this has been that MPs and spouses would generally make full disclosure to the commissioner; that only when an MP became a minister or a parliamentary secretary would that disclosure be made public or be subject to full public disclosure. What is you reaction to that? Mr. Sharp and others have pointed out that there is clearly a distinction between Members of Parliament generally and members of cabinet or parliamentary secretaries. If we had full disclosure to the commissioner by all Members of Parliament, but only public disclosure by him when cabinet offices were assumed, would that be an appropriate approach?

Mr. Hughes: Perhaps you could tell me what the reason would be for making the distinction before I answer the question.

Mr. Bird: There is a general reluctance, I would think, on the part of most human beings to make their private affairs fully public unless it's necessary to do so. Yet there is clearly the extra onus of executive responsibility once one is appointed to cabinet, where conflicts of interest become much more real in terms of the prospect of influencing affairs. It was felt that generally speaking people would be reluctant or would prefer not to make their affairs fully public. At the point that they were faced with the decision of accepting higher office or not, they would have to then make that decision. I must say that I am attracted to that as perhaps an area of compromise in making this proposed legislation fully acceptable to existing Members of Parliament, but more particularly prospective Members of Parliament. If that break between private disclosure and public disclosure were available, then one would have to take that into consideration at the time of considering the opportunity for cabinet service.

Mr. MacIntosh: As you know, the Nova Scotia act makes no distinction between cabinet ministers and—

Mr. Bird: I understand that. But I just wanted to raise this question with you.

Mr. MacIntosh: I endeavoured, in my opening statement, to say that the only justification that I could see for not having full disclosure by everyone would be to appeal to people to come forward as candidates, knowing that they wouldn't have to go that far. If that reason has substance or weight behind it of some proportion, then there may be merit in doing what you say. I think the public would readily accept and be satisfied with full disclosure and the application of common sense by a commissioner, as preferred by Mr. Martin. But I have to say that, knowing the hesitancy there is for the reason that you give, that halfway measure—if I can call it that—may have some possibilities, if it will result in the kind of people you want in public life coming forward.

Mr. Bird: Thank you.

The Joint Chairman (Mr. Blenkarn): I want to thank you all for coming today. It was helpful to understand what really is happening in British Columbia and in Nova Scotia. We're moving along quite rapidly, as you may have guessed by looking at our record. We have only two more meetings to consider witnesses. We were going to have a meeting on Thursday, but unfortunately the Ontario government is having a budget on Thursday. Our next meeting will be on May 5 at 9.30 a.m. and then again at 3 p.m. At 3 p.m. we have the Hon. David Peterson, the former premier of Ontario, followed by a panel of members of the Ontario legislature, dealing with their system. On May 7 we have Professor John Langford from the University of Victoria and members of the Parliamentary Spouses Association, who really badly want to hear Mr. Prud'homme. So with that I'm going to adjourn.

Mr. Prud'homme: On a point of order, I want it on the record that I really insist that you do everything you can to invite Mrs. Maureen McTeer. She's outspoken. She has a strong opinion.

The Joint Chairman (Mr. Blenkarn): I have spoken to Mrs. Clark about the matter.

Mr. Prud'homme: I know. Give her more options than one.

The Joint Chairman (Mr. Blenkarn): We've discussed the issue and she doesn't want to come.

Mr. Prud'homme: Any more.

The Joint Chairman (Mr. Blenkarn): This meeting stands adjourned.

Appendix C

EVIDENCE

[*Recorded by Electronic Apparatus*]

Thursday, April 9, 1992

• 0938

The Joint Chairman (Mr. Blenkarn): We're resuming consideration of the subject-matter of Bill C-43, an act to provide for greater certainty in the reconciliation of the personal interests and duties of office of members of the Senate and of the House of Commons, otherwise known as the conflict of interests committee.

Our witness this morning is the Hon. Paul Martin, Member of Parliament. Welcome, Paul, and thank you for coming. We have your notes, but I would like you to go through them, if you would.

Mr. Paul Martin, MP (LaSalle—Émard): Thank you very much, Mr. Chairman. I want to say I am grateful for having been given the opportunity to testify before this committee.

The importance of your work should not be underestimated. You have much to deal with. However, I will confine my remarks to only one specific problem, and that is conflict of interest.

Increasingly, the public is losing faith in the credibility of the political process. Increasingly, the capacity of political parties to attract candidates from a variety of backgrounds is being undermined. The problem is that the more diverse the background of the candidate the greater the possibility of conflict of interest. Now, this is true for people from business, obviously. But it is also true of people from most walks of life, from the cultural communities to the professions and from agriculture to labour unions. The dilemma that arises is how to satisfy the legitimate demands of the public in terms of conflict of interest legislation, on the one hand, with the need to recruit candidates with the different backgrounds required to contribute to the nation's good, on the other.

Let me say right at the beginning that I recognize you cannot legislate honesty. No alternative will prevent dishonest public servants from doing whatever it is they seek to do, nor will any alternative on the other hand prevent others from making unfair allegations or casting unjust innuendos damaging the reputations of honest people. This is not a perfect world, but this should not stop us from seeking to arrive at the most credible and just solution possible.

• 0940

For purposes of discussion, Mr. Chairman, I will use myself as an example, not because I was a very good candidate, but simply because I know my own case better than any other.

After my election to Parliament in 1988, I opted voluntarily to publicly disclose all of my assets by registering them with the Clerk of the House of Commons. This was not, as you know, a legal requirement. However, since I was in a potential conflict of interest position, I felt the public was entitled to an accounting of what my main business activities were. Since that time, I must say, my thoughts on this matter have further evolved.

Some people have said that I could have sold, and there are a number of good reasons for not doing so, two of which I will mention. First, I simply did not want to sell a company which I spent a good portion of my life building. I have to tell you that I've had a love affair with ships since I was ten years old, and the emotional stress would have been there. But perhaps even more important than that, I have three sons who were under the age of 30. All three may—and those of you who are fathers and mothers understand that you have no control over this—want to make their careers with CSL. I believe my decision to seek public office should not deprive them of that option, and in this I don't think I differ from very many people.

My principal investment lies in the ownership of the preferred shares of the CSL group, a company I ran for a number of years and bought in the 1980s.

Ownership of the common shares is held by three trusts in favour of my sons.

The CSL group's main activities are: shipping on the Great Lakes and deep sea through Canada Steamship lines; a 50 per cent ownership of a company called CSL Equities, which is engaged in intercity busing in Ontario through Voyageur Colonial; real estate investments throughout Canada; other partnership shipping activities and shipyards in Ontario and Nova Scotia.

There are a number of areas of potential conflict of interest arising out of the aforementioned activities. For instance, the company is affected by corporate tax measures, labour law, and corporate law, legislation that affects the marine industry. The St. Lawrence Seaway and other transportation matters affect the company directly, such as seaway tolls and VIA Rail, which is Voyageur Colonial's principal competitor.

In addition to this, Mr. Chairman, there are specific areas in which the company transacts directly or indirectly with the government. For instance, the company is a shareholder in three shipyards, which bid on government orders. Another example is the Canadian Wheat Board, a customer of CSL ever since Canadian grain has been shipped through eastern ports. The issue I would like to address is how can someone with these kinds of business activities hold public office? What's the solution?

First of all, there is no perfect solution. Divestment is not the answer, because it would effectively eliminate most entrepreneurs, who are among the kinds of people that we should have in public office. The best answer, I believe, lies in public disclosure of all of a member's holdings and activities. Public disclosure, a complete summary, provides the clearest form of protection for the public and indeed for the public office holder. As a matter of course, all investments,

holdings, and business activities of a public servant should be on the public record. This kind of disclosure would satisfy the two principal criteria, which are to provide, first, credibility, and that the public knows that only legitimate activities will bear public scrutiny; second, protection for MPs, senators, and ministers, who want to know the rules of the game so they are as free as they can be of the fear of unfair criticism.

I would envisage the process being handled in the following way. First, I would maintain the blind or frozen trust concepts for ministers. I don't think on their own they are effective, but I believe such mechanisms provide the capacity to maintain a formal arm's-length relationship from the management of a minister's holdings. Needless to say, only registered trustees would be acceptable; they should not be friends of the minister, as my colleague Don Boudria has pointed out. Second, disclosure should be made not only of an individual's holdings but there should also be a general description of areas of actual or potential conflict. I believe this is quite important, Mr. Chairman.

• 0945

Considerable discussion has been held on whether a spouse's holding should be made public. What I would say here is that if the committee were to decide that it was not necessary, I would recommend to any public servant that it be done voluntarily.

Third, the position of ethics commissioner should be created. This commissioner should report to Parliament. The people of Canada are entitled to have their elected representatives oversee the process of monitoring conflict of interest. The role of the ethics commissioner would be, as I see it, first, to oversee the disclosure process, and second, to provide the public with the assurance that individual transactions which might be in conflict have been handled in a fair and legitimate matter. I would add on that, Mr. Chairman, that I believe that the media ought to have access to the ethics commissioner. Third, he would provide individual MPs, senators, and ministers with advice and counsel and an imprimatur that an individual transaction has been handled in a fair and legitimate way.

No one can protect a public servant from unfair attack, but this would at least provide an answer that should satisfy any reasonable member of the public who became concerned.

Taking ownership of the problem now, creating an independent ethics commissioner should go a long way toward removing the issue from partisan politics. It is this aspect alone that creates the greatest degree of public skepticism.

I believe that our ability to attract good candidates and our ability to satisfy the public as to legitimacy of the political process will only be satisfied if we call for full disclosure.

I further believe that there should be an officer of Parliament capable of assuring the public that the facts in any case are as presented. The vast majority of those who enter public life are honest. What they want is to have the rules of the game clearly established and an officer of Parliament to confirm their honesty if it is under attack.

It is fear of the glancing blow—I know that you all know and understand quite well what I am saying—and the unfair innuendo that bring about the greatest degree of reluctance to run for public office. I believe the public are fair. What they want is for the political process to be fair as well.

Let me be very clear, because I understand that there has been some debate at this committee, that I do not believe that strict conflict of interest guidelines are an obstacle or an impediment for those seeking public office. Rather, I believe they provid a degree of protection for all as they clearly define the parameters involved. Establishing the ground rules now, very clearly, ensures that people will not be blind-sided by the process, whether it be the public, the parliamentarian, or the government.

I encourage you all to leave nothing to chance, and not be ambiguous. You must determine the course of action that will result in attracting the best men and women to serve the country. At the same time, I am sure you understand the realities that exist more than anybody. Opting for public life should not entail turning your back on what you have spent your life building.

In conclusion, Mr. Chairman, the task of this committee is great. As we engage in the current constitutional debate and as we re-examine our political institutions, we must ensure that honesty and integrity are the basic foundations of that redefinition.

Attracting people to public office in our political public environment is tough. There is no doubt about that, for all political parties. I simply ask you to think what it could be if, at the same time we engage in a reform of our political institutions, we enact conflict of interest guidelines that finally set out the rules of the game and take the debates of the nation from scandals to securing the challenges of the future.

Thank you, Mr. Chairman.

The Joint Chairman (Mr. Blenkarn): Thank you very much.

Mr. Boudria (Glengarry—Prescott—Russell): I want to ask first about the public disclosure aspect. A number of members of this committee and a number of witnesses have spoken on this issue. When you talk about public disclosure, let me tell you how I see it and tell me if it matches your description.

I think public disclosure means that to the registrar of interests—shall we call it that for the purpose of our conversation—one would disclose everything to the registrar, and then the registrar would make public essentially the same thing save and except that the exact quantity of asset would not be there. In other words, it would say Paul Martin owns shares in CSLA and CSLB, or whatever they are called, but it wouldn't say he owns 200,000 shares, or he owns six shares. Is that how you would see it in terms of what is made public?

• 0950

In terms of what is registered with the registrar, then of course the information is more complete, and in terms of what the registrar then makes public; because I think that has to be very, very carefully spelled out by this committee. We don't want the registrar or the assistant deputy registrar general—that's the case with the person who's the registrar now—or anyone like that to make up his or her own rules. We've heard complaints that some rules seem to have been

made up by no one in public office, and there is a concern there. So how do you see that happening? Is that the way you see it?

Mr. Martin: Yes, that's pretty close. I proceed primarily from the public's right to know; and the public's right to know if indeed any individual legislator is in a position of potential conflict of interest. Therefore, to use your example, while I think it's important, for instance, to know that an individual member owns shares in the Royal Bank and that's where the potential for conflict exists, I don't think it's necessary for them to know the member has 100 shares or 200 shares of the Royal Bank. It is important to know, however, where the potential lies.

That being said, Mr. Boudria, the idea of the registrar providing a summary is not one that makes me feel all that comfortable. Certain things can be kept private, but I really do believe in the fullest public disclosure.

Mr. Boudria: I wasn't suggesting a summary. Well, maybe in a way I am. But let me explain further how I see it.

For instance, you would register everything with the registrar. The registrar says okay, you own two shares of CSL, that's nominal; we're not even going to report that, because I don't consider that to be worth reporting. All right, you have 16,000 shares of this other kind; that's worth reporting. So in your registration, everything is going to be there, except you remove the quantity, everything that does have a mere nominal value.

That's how I would see it. In other words, everything would be public, save and except—

The Joint Chairman (Mr. Blenkarn): What about controlling interest; absolute control?

Mr. Martin: Absolutely. I don't think the value is that important. I don't think the value determines whether there's a potential conflict of interest. But I would not make an exception. . .if somebody has two shares of something, I would put in "shares of" something. I think the public is entitled to know this is a complete list of everything this person has.

Mr. Boudria: If I could just change gears for a minute. . .

I would like to deal now with the issue of the registrar, or rather the Ethics Commissioner. In Quebec we have what we call a Jurisconsult. It is a quite interesting principle but somewhat different from what you are suggesting this morning in the sense that in Quebec, the Jurisconsult's role is to provide counsel to public service holders. As a public service holder, Don Boudria would go and see the Jurisconsult to apprise him or her of his personal situation. He would then ask whether there is a conflict of interest. The Jurisconsult would answer as follows: if the facts are as presented, there is no conflict of interest and I will put it down on paper. Then, the member of Parliament has a written evidence which enables him to say to anybody questioning him: no, there is no conflict of interest. The Jurisconsult said so and I have here a written statement that shows it, and so on.

Do you think there is merit in such a system? Could you provide us with some examples to help us understand the value of such a system?

Mr. Martin: The Jurisconsult is what I called the Ethics Commissioner. I am totally in support of that principle, not only to protect the public but to protect the member of Parliament or minister, as you just said. It is an impartial third party who says: I have ascertained the facts and the public can rest assured that they are as presented.

I'd like to give you a personal example of why I think the ethics commissioner or the jurisconsult could be so valuable. It is something that happened to me a month ago in Halifax, actually.

• 0955

The point that I would address, Mr. Chairman, following Mr. Boudria's question, is to demonstrate that the ethics commissioner is of great benefit, not only to the public, but to the individual member of Parliament.

I landed in Halifax and went to a meeting about a month ago. As happens to many of us, I walked into the room and the next thing I knew a microphone was put in front of me and a television camera. The first question that was put to me was "Do you believe that all contracts given by crown corporations should be put out to public tender?" I gave the answer I'm sure we all would give, which is to say yes, above a certain level I think they should be.

I had no idea as to the purpose of the question. It was in the middle of the Nova Scotia leadership problem with the Liberal Party and I thought that was what the question was going to be. I can tell you, I was caught out. The reporter then said to me "What about this Oceanex contract with CN Rail?"

Let me simply explain to you that Oceanex is a company in which I have a small minority interest. It was a company that was formed after I went into politics. It was the merger of a series of companies, one of which was a company owned by CSL. One of the companies it had been merged with had had a longstanding relationship with the CN Rail. It was a contract that had been tendered many years ago and this was an extension of a contract.

When the question was put to me, I barely knew about Oceanex. I knew nothing about the contract and had none of the facts. Consequently, I sort of stumbled around on television because I really had no idea what all the facts were. That's the end of the story.

I thought to myself afterward, though, that there was no allegation that I had attempted to influence any decision. Anybody who knows the role of an opposition Member of Parliament knows that it's pretty hard for us to influence anything the government does.

The Joint Chairman (Mr. Blenkarn): Oh, I don't know.

Mr. Martin: But what was left hanging out there was that this untendered contract had been given. I thought to myself what if I had been on the government side and that innuendo had been out there? There were implications. The

second thing that occurred, of course, is that I knew absolutely nothing about it. This is the position that, for instance, a minister of the Crown would be in. He would know nothing about the contract.

The fact that you know nothing about something when you're asked about it makes you look like you're trying to hide something. I believe that if there had been an independent ethics commissioner or a jurisconsult who could ascertain the facts, then the media could have gone to that commissioner and found out what the facts were. They would have found that in fact the contract had been tendered some time ago and that it was the result of a merger. They would have been able to satisfy themselves. I think the media is entitled to know and the public is entitled to know. I would have been able to say there is an impartial third party who has essentially said that the facts are simply not as presented, and in fact this is quite a legitimate transaction. That's an example of why I think it's so important for the individual member of Parliament.

The Joint Chairman (Senator Oliver): Could I just follow up on your Oceanex example? If you had been the Minister of Transport at the time, do you think that merely doing a public disclosure as you've explained in your paper would have been sufficient? Or, as Minister of Transport in those circumstances, do you think that some sale or divestiture would have been obligatory?

Mr. Martin: Before answering your question I'd like to know if, by divestiture, you mean a blind trust or an absolute sale?

The Joint Chairman (Mr. Blenkarn): The real issue you have with CSL is that it is family-controlled as part of the family business. The consequence is that you probably couldn't divest by divesting and selling off. The real issue is whether you're entitled ever to be a Minister of Transport.

Mr. Martin: I think, clearly, a ministers should absent himself or herself to the maximum extent possible from any decisions that directly affects them. This would make it somewhat difficult because I would be the most absent Minister of Transport the country has ever seen, if that were the case. On the other hand, you can only take that so far because, quite clearly, tax laws and labour laws and an enormous number of things would impact upon me. I think there's a limit to where you would go.

• 1000

If the answer to your question is to ask if I should divest by having a blind trust, the answer is clearly yes. But I think the chairman has said very clearly that to divest by sale might well not be possible and would certainly deprive a lot of people of the possibility of coming into public life.

The Joint Chairman (Mr. Blenkarn): But your problem is that a blind trust of a family business is never blind. No one will believe you don't sleep with your wife or don't have Christmas dinner with your kids or don't see your grandchildren.

Mr. Martin: Mr. Chairman, I believe your criticism in terms of the blind trust is valid. That's why I said in my remarks that it's simply a mechanism, full public disclosure being the only answer, I believe.

The answer to the question is really that if the public sees that Oceanex, for example, is out there, that I hold a minority interest in Oceanex, and that Oceanex is doing business with the CNR, I believe the public will be entitled to say the things that are done are legitimate when they are done where the public can have full scrutiny of them. Illegitimate activities don't bear public scrutiny.

Mr. Layton (Lachine—Lac-Saint-Louis): On that subject, I have a supplementary question, Mr. Chairman. Is it possible to have a complete transfer to a blind trust and also to have full disclosure? Because you don't have control of what goes on in a blind trust once it's created. So you may still become a major shareholder in a company through your trustee and investment manager, but because it's a blind trust—which I tried to maintain, so I know—you're never sure what your holdings are. You say there's full disclosure. Who discloses?

Mr. Martin: It is the responsibility of the trustee—if what you are thinking about now is a portfolio—to make sure disclosures are kept up to date.

Mr. Rodriguez (Nickel Belt): Does that public disclosure also extend to spouses, Paul?

Mr. Martin: I know this is a matter of considerable controversy around the table for this committee. My own belief is that the decision to go into politics is a joint decision, and while I understand the arguments against having a spouse being required to disclose assets, the public's right to know is greater. I believe there ought to be full public disclosure by dependent children and spouses, but certainly also understand the arguments on the other side.

The Joint Chairman (Senator Oliver): What about your brother or sister?

Mr. Martin: No, I don't think so. I think the decision to go into public life is not your brother's. It is one you take jointly with your spouse.

The Joint Chairman (Mr. Blenkarn): A more key issue though is that affecting a major company that is a family-oriented business. You can't walk away from such a company, and it's very difficult for you to get away from it. Even if you could get yourself out of it, the rest of your family is still involved in the company.

Are we going to say to people that if they have a family that is relatively well off or has major business interests in the country and one member of the family is elected a person is forever incapable of serving in a public or crown office? It doesn't really matter.

If you have divested yourself completely of all your interests in CSL and its affiliates, for instance, people would still say you are looking after your kids, or the public servants or the CNR wants to look after their minister so it's sending a contract to one of the minister's kid's companies.

Mr. Martin: I appreciate that problem. You really have to make a distinction between what the law should say and what a person might do voluntarily in order to protect himself. I am just going to return to the issue.

In the case of the legislator or the minister, as the case may be, and his or her spouse, I believe there should be full public disclosure so that people can actually see that his or her affairs are on the up-and-up. And for dependent children as well. There has to be a limit. Now, I would recommend that if the rest of the family were prepared to go along with it there be public disclosure of the rest of the family's assets. But I don't know how you can begin to legislate brothers, uncles, and cousins.

• 1005

Senator Balfour (Regina): Mr. Martin, there is one element of disclosure that seems to be missing, and that is the disclosure of liabilities, which in certain circumstances could create a conflict of interest situation more grave than disclosure of assets. What do you think of that?

Mr. Martin: To make sure I understand the question, what you're saying is if the liabilities are, for the sake of discussion, very heavily to—

Senator Balfour: A chartered bank.

Mr. Martin: —a bank, then could you be influenced in the way you did your. . .? Yes, I think that's a valid comment. I think any potential conflict ought to be set out and so I would share your view.

Could I say there that one of the things, and I don't know if you've dealt with this, is I think there should be a description in the disclosure of all potential areas of conflict.

Senator Balfour: But not necessarily quantifying them.

Mr. Martin: Not giving the number, because I really don't know what quantifying would do, if indeed the quantification were—

Mr. Prud'homme (Saint-Denis): Titillating.

Mr. Martin: Titillating is the word. I wasn't sure if it was a parliamentary word.

Mr. Prud'homme: In this committee we use that word.

Mr. Martin: Well, in this committee you've obviously got a more. . .the chairman is. . . Yes, you're all titillating.

Some hon. members: Oh, oh.

Senator Balfour: Thank you.

The Joint Chairman (Senator Oliver): May I ask one question to follow up on Senator Balfour's question? On page 6 of your document you make the statement you just made again and you say:

Disclosure should be made not only of an individual's holdings but as well there should be a general description of areas of actual or potential conflict.

How are you ever to know? I mean, how could you have known about Oceanex?

Mr. Martin: No, I couldn't, but one of the things I would have done—and as I say my thinking has evolved on this line—is I would have gone back to the company's legal officers and I would have said to them you're going through this thing from top to bottom and you are going to outline every potential area of conflict, every area where you deal with the government. Having gone through that process, this contract with the CN would have come up.

Senator, there are going to be mistakes made. There are going to be things that are going to be left out, but again, as I mentioned, we are not going to achieve perfection here, but I want to get as close to it as I possibly can.

The Joint Chairman (Senator Oliver): Okay, thank you.

The Joint Chairman (Mr. Blenkarn): Mr. Prud'homme.

Mr. Prud'homme: You know that this committee has been sitting for a long time. You know as well that Bill C-43 was hastily designed, as almost everybody recognizes. Due to some unfortunate political events of the time, the government saw it fit to throw to Parliament a bill that was prepared in a hurry. That is our view. Now, we are stuck with this bill and asking ourselves what could best meet the people's expectations.

Almost everything has been said to date. In your statement, you mentioned what is called a kind of jurisconsult, someone who would be trusted by his colleagues. We believe that the credibility of the Members of the Senate and House of Commons Conflict of Interest Act will depend on the integrity of the first jurisconsult that will be appointed.

In view of the fact that Justice Mayrand is 82 years old, I am thinking for instance to someone like Justice Albert Malouf, a judge who has had a lot of experience, from the Trial Division to the Superior Court, the Court of Appeal. He is now retired and enjoys an absolute unchallenged integrity. I do not want to eliminate all other potential candidates, but he is the kind of commissioner we should have: someone in whom not only public service holders but the public at large have placed their confidence. Would you agree to this first description that I am trying to present to my colleagues?

Mr. Martin: Yes.

Mr. Prud'homme: Let us deal now with the most controversial point, at least between my colleague Rodriguez and myself. This is how this committee operates. We listen to each other, we have initially very opposite positions and we gradually come closer to put forward a legislation that will be agreed to, acceptable to all and deemed reasonable by the Canadian people.

I have been studying the problem for a number of years, and I have personally concluded that it should be full and complete disclosure to a jurisconsult and that it would go no further. The other school of thinking, which some people seem to favour, is disclosure following the Australian model. Their official, who has a different name, publishes a list of assets without necessarily quantifying them. For example, I do not see the usefulness of making public whether someone has $152,000 or $90,000 in a Bank of Montreal account. It is enough to know that he or she has savings. Would you include disclosure of Canada savings bonds and Government of Canada bonds? In the case of shares in banks or credit unions, the answer is obvious. As for me, and this does not reflect my patriotism or lack of it, when the credit unions say: you can buy so much per year, I buy. I do not want to say that this is out of the goodness of my heart, because that would be rather disdainful of such an important institution, but I buy. Do you want all of this to be included in the statement of disclosure?

Secondly, we have studied the Ontario system in minute detail. We used the example of David Peterson, which was given to us. Mr. Peterson pobably made a complete report on his assets as well as his wife's. That was when we realized she was much richer than he is. Her statement covers three full pages, without quantification. In your opinion, if we want a system that will be accepted by parliamentarians and citizens, if we are going in that direction... this is where our thoughts have led us. If we could agree on that, I think that our work would be completed quite quickly, but we have not reached that point. If we are going to have disclosure to a consul, a proconsul or an ethics chief commissioner, should that information be quantified as well as qualited? Do you believe that the latter official should publish a qualitative list? We are opposed to the idea of a summary because that seems to suggest that something is being hidden. For example, Mr. Paul Martin owns a car, a cottage, a mansion, and this and that; he also has shares in the following companies as well as interests and bonds from the following banks, without any further detail. Then we would be in a position to decide whether there is a conflict of interest.

Mr. Martin: In my opinion, the declaration should be as open as possible. Each time that there is an exemption...

Mr. Prud'homme: I was not making any.

Mr. Martin: No, but each time there is an exemption, the public is entitled to ask questions. I do not think that personal property cause a problem. Whether I have one or two cars is not very important. However, if you have Canada savings bonds or Government of Canada bonds, I think that should be made public. In my opinion, the rule should be that disclosure be as public as possible, except...

Mr. Prud'homme: That is the point, except for quantification.

Mr. Martin: Yes, except for quantification.

Mr. Prud'homme: I am pleased that I got you to add that, because that is the crux of the issue. My colleague and I have reached a consensus on this point, but everyone has not yet agreed.

The entire issue hinges on that point. We talk about full disclosure, but what exactly does "full" mean? Does it mean how much money does Paul Martin have? I do not believe that is what you mean when you refer to full disclosure. You are saying, I believe, that the public is entitled to know exactly what you own, are you not?

Mr. Martin: If someone could prove to me that it is important for the public to know whether I have 200 or, rather, 400 Royal Bank shares, I would be perfectly in favour of quantifying that information; however, as I see it, the day I tell you I own a number of Royal Bank shares, you will automatically know that there is a potential conflict of interest. It is not important that you know how many shares, as far as I am concerned.

Mr. Prud'homme: So, just saying that you own the shares would be enough.

Mr. Martin: Yes, I believe so.

Mr. Prud'homme: Fine. Thank you.

The Joint Chairman (Mr. Blenkarn): Except if you had a significant interest in terms of the various control legislation.

Mr. Martin: Oh yes.

The Joint Chairman (Mr. Blenkarn): In other words, if you had an interest that would be subject to the control legislation—we have the—

Senator Balfour: The 10% rule.

The Joint Chairman (Mr. Blenkarn): —the 10% rule, the 25% rule—

Mr. Martin: Sure, absolutely.

The Joint Chairman (Mr. Blenkarn): —and that type of thing—then that would be a significant interest. A significant interest in a public company is not necessarily something you can even sell.

Mr. Martin: Yes, I agree with you.

Ms Callbeck (Malpeque): I'd like to follow up on two or three things. One is disclosure. You say that disclosure must be as public as possible. On page 3, you say that you have 50% ownership in CSL Equities. On your disclosure, would that just say CSL Equities, or would it list all the real estate companies that's involved in? Everything?

Mr. Martin: Yes, it would list everything.

Ms Callbeck: So if you owned some shares in a mutual fund, then the main mutual fund wouldn't be there but all the companies that the mutual fund—

Some hon. members: No.

The Joint Chairman (Mr. Blenkarn): No.

Ms Callbeck: I asked that because I was told in one of the provinces that this is the case.

Mr. Boudria: In Ontario?

Ms Callbeck: In fact a member told me, who actually didn't have that many assets, but when the summary came out, there were all the names.

Mr. Martin: Again, though, would it not be that if you had shares in the ABC Mutual Fund, then, for anybody who wanted to know what the mutual fund was investing in, monthly reports would be published and they could probably get that information? So I don't think it would be necessary. In fact, it would be impossible because you'd be updating your filing every second day.

Ms Callbeck: I agree, but I just wanted to clarify that.

Something else that was here that was asked about was the description of areas of actual or potential conflict. If actual conflict is determined, then what are you saying? That if you were a cabinet minister, then you would not take part in those discussions or vote, or that because you disclosed, you'd carry on and do your business?

Mr. Martin: I think it would really depend, and let me simply give you two examples. I believe that we are all subject to phenomenal conflicts of interest all the time and that it is impossible to get away from them. The only answer, therefore, is first of all to say to the public, I'm going to tell you where all the conflicts exist either in reality or potentially so that you know, because if I know that you know, then there's no way I'm going to do something untoward. That's the first thing.

The second thing is I think you should absent yourself wherever you're directly involved, but you can't consistently and I'll give you the example. If one were ever sitting around a table debating seaway tolls, I think it would be quite clear that I should get out of the room. On the other hand, if one were sitting around the table debating labour law, or new tax legislation as it applies to corporations, then I think I would stay there because this would be something that applies to the general public. An individual judgment call has to be made. It may well be that one might occasionally consult with the ethics commissioner on that, but I think it's a balance.

• 1020

Mr. Prud'homme: What happens if cabinet happens to be discussing interest rates on Canada savings bonds and three-quarters of the ministers have a considerable portfolio of Canada savings bonds? The cabinet is in the process of deciding what the rate will be for the following year. This kind of decision may be made not only by the Minister of Finance, but by other ministers as well. The Minister of Finance may be listening to other views and then make his own decision. Do you feel all those ministers would be required to abstain from such a discussion?

Mr. Martin: I think first of all—

Mr. Prud'homme: You said that one cannot legislate honesty.

Mr. Martin: The answer to your question again is a balance. I don't think that the interest rate on Canada Savings Bonds is set by cabinet—

Mr. Prud'homme: By the minister.

Mr. Martin: I don't even think it's set by the minister. I must say, having seen a number of cabinet decisions, I would hope to God it's not.

The Joint Chairman (Mr. Blenkarn): Now you're being partisan.

Mr. Martin: No, I was talking about governments generally.

Again, I'm going to go back. I think there's a balance. I think that applies generally and I would think that ministers would have to be at the table and would have to make decisions involving... But as long as the public knew the conflict.

The Joint Chairman (Mr. Blenkarn): You raised an issue at a cabinet meeting; you're discussing seaway tolls and you're the only person in the whole room who knows a goddamned thing about seaways and seaway tolls and are you going to tell me that the cabinet is going to be deprived of your wisdom concerning the use of the seaway and how tolls affect shipping because you happen to be the expert on hand? Why should you absent yourself from that discussion? You can obviously tell them. They know you have perhaps the largest user of the seaway, but surely to goodness to absent yourself from that discussion would be a bit of a stupidity as far as the country is concerned.

Mr. Breaugh (Oshawa): Wait a minute!

Mr. Martin: You can talk if someone was a university professor and you were talking about the amount of federal funding to universities... I understand your question, Mr. Chairman, but you do arrive at a point where there is the perception that you might be unduly influencing a decision, and I think that again it's a balance and I think that in that instance one should probably withdraw.

The Joint Chairman (Mr. Blenkarn): Is that what you're saying? Yes. All right.

Mr. Rodriguez: You didn't leave any room at all for divestment.

The Joint Chairman (Mr. Blenkarn): Are you finished, Mrs. Callbeck?

Ms Callbeck: I just have one other question—

Mr. Rodriguez: This was a follow-up to Mrs. Callbeck.

Ms Callbeck: Okay.

The Joint Chairman (Mr. Blenkarn): Okay, all right. You're next on my list.

Mr. Rodriguez: It's just a question of divestment. If you're holding 500,000 Air Canada shares and you're invited into the cabinet to be the Minister of Transport, it would seem to me that there's no doubt that you have to divest of the shares if you want to be the Minister of Transport. You know you have the shares and it's not blind.

Mr. Martin: Number one, if the market is way down, and elections are not scheduled when markets are up necessarily, you might well be saying that the financial penalty might be so great that you're not going to get that person to run if indeed he or she has to divest at that point.

My own belief is that if the public knows you have those 500,000 shares of Air Canada and you're the Minister of Transport, you have one potential and you are going to watch yourself. I believe that protection lies in the public knowing.

Taking it one step further, really the point the chairman has raised consistently is at least you can dispose of the shares of Air Canada; you may take a loss, but many times in the case of a private company you are really in a very difficult bind.

The Joint Chairman (Mr. Blenkarn): The control block of even the payment of a public company puts you in an enormous bind, particularly if the control is spread among members of a family. In effect, you have a family public company, or a family private company or public company but the family has the majority control of the public company. You can't just dump those shares on the open market. You have huge restrictions in the stock market and all sorts of problems in trying to get your money out of it. It's just not possible.

• 1025

Mr. Rodriguez: I just want to raise the question that it's a perception of the public. Here you are holding these shares. The public knows you have them. You're the Minister of Transport. With every decision you make on air transport that Air Canada might benefit from, you're being second-guessed by the public. How can any politician maintain any kind of balance with the public constantly second-guessing, the competition constantly suggesting... I think it's an untenable position for any politician to find himself or herself in.

Just the other day we had a member of the Senate who sits on their banking and finance committee and who is an insurance broker, and right away the CBA is accusing him of having a conflict of interest. And that's just at that level. If you are in the cabinet, making very important decisions that determine the health, failure, or success of the air industry, for example whether you merge with Canadian Airlines or not, where you are going to directly benefit, I don't see how you can keep it.

You weren't elected to be a cabinet minister. You were elected to be a member of Parliament. When you are invited into the cabinet, it's a privilege, it's not a right. Therefore, if you want to have that position you'll have to make these tough and difficult decisions. Sinc Stevens never knew how to draw the line, and we ended up with a lot of problems.

Mr. Martin: The easy answer would be to say "divest". Or it would be to say, don't become a minister, in the case of the person owning 500,000 shares of Air Canada, the Minister of Transport. But the fact is that individual is nonetheless going to be sitting at the cabinet table when all these decisions are being made and discussed. The fact is, you cannot divest yourself of your background; and in fact, I don't think you want people without background in public life.

The Joint Chairman (Mr. Blenkarn): Hear, hear!

Mr. Martin: A labour leader cannot divest himself or herself of having 20 years in the labour movement when you are sitting around a table discussing labour legislation. University professors cannot divest themselves of the possibility that they may go back into university, teaching, after they leave public life, when you are discussing grants to universities.

So I come back to it. The only answer is public disclosure. If you decide you are going to insist on further divestiture, then I think what you are going to have to do is make sure the only people who run for public life are 18 years old.

Mr. Rodriguez: Paul, disclosure isn't the total answer, it's a cornerstone. But you have to have an array of ethical armaments. One of them is divestiture. One is recusal. One is a declaration. If you are at the cabinet table, you are not in the Minister of Transport portfolio but you're at the table and you are discussing and you have that significant interest, there is a declaration and recusal. Other jurisdictions have it.

I am saying the ethical practice has to be established. If the Prime Minister asks me to come in and he says if you want to be that, you have to divest, then you have to divest.

What if you go to the jurisconsult and the jurisconsult says you can't hold this position without divesting. A blind trust is not the answer. If the jurisconsult says you can't hold this position without divesting, a blind trust is not the answer. If the jurisconsult says to you you have to divest, what are you going to do? Are you going to tell the...

Mr. Martin: Mr. Prud'homme said it very clearly. The ethics commissioner has to be somebody of such incredibly high integrity that the public is going to have complete confidence in them. They have to have the ability to investigate—

Mr. Prud'homme: It is the key, the central thing.

Mr. Martin: I must say, in the end, if the advice from the ethics commissioner were advice the minister or senator did not want to follow, then they would have no alternative but not to accept the post. I would place tremendous reliance on what this ethics commissioner was going to say and do, because it's the ultimate guarantee the public has.

Ms Callbeck: You say strict conflict-of-interest guidelines are not an obstacle for those seeking public office. When you say "strict", are you saying regardless of what is in those guidelines, they are not going to be an obstacle? If the number of shares you own and everything else have to be listed in the guidelines and so on... In other words, everything has to be out there on paper for the public. Because it has been suggested and I believe in the future there will be more women in public life who may happen to be married to businessmen who have a lot of investments, who aren't that fond about the public knowing exactly what they own and what they don't own. You don't see this as an obstacle in any way?

• 1030

Mr. Martin: As I mentioned, if a woman is seeking to run, I don't that her husband should have to list the quantum but should simply have to list what the position is. As a point of clarification based on what the senator just said, and that would be my view.

That having being said, I think that there are a number of impediments to running for public office. There is no doubt that a spouse having to reveal his or her assets may well be an impediment to running. However, that being said, and obviously we've all had experience around this table, I believe that the biggest impediment to running is the fear that, unfairly or unjustly, your reputation is going to be damaged. When you talk to people, that's what they're afraid of. They're afraid of running and that people are going to throw mud at them and all of this is going to happen. What you then have to address is how you can minimize that. It is my own view that's a greater fear than the fear of having to reveal your assets publicly, and if by publicly revealing you can reduce that threat of unfair innuendo then I think what you have in fact done is removed an impediment, not added one.

An hon. member: I agree.

Mr. Martin: May I just say that I understand the difficulty. I think that the single most difficult thing is in fact the spouse having to reveal his or her assets. Where does the balance of public good lie?

Mr. Prud'homme: On a point of order, I still have not received an answer as to my proposal for calling in Mrs. Maureen McTeer. Are you still reflecting on this?

The Joint Chairman (Mr. Blenkarn): I've talked to her. I had a long chat with her. She's tied up going to school in Dalhousie part-time and writing a thesis, so she would prefer not to put a remark together at this point.

Mr. Prud'homme: At this point.

The Joint Chairman (Mr. Blenkarn): Yes, at this point.

Mr. Prud'homme: So we need a lunch to convince her.

The Joint Chairman (Mr. Blenkarn): You can have lunch with her.

Mr. Rodriguez: Marcel, I don't know why you're so fascinated by this.

Mr. Prud'homme: I think that, as modern as you like to pretend to be, it is a modern problem. Spouses are not—

That is not the purpose of the discussion. That is over and done with.

Mr. Rodriguez: I don't see it as a problem.

Mr. Prud'homme: It is.

Mr. Rodriguez: I think, Paul, you've identified this whole question of conflict of interest. We're dealing with public perception of the politicians, but one has to be ready to admit that the politicians have delibertely confirmed their worst perception to the public when they read about, for example, in the case of the Congress where they had their own bank and they were running overdrafts on their own bank, and when we had a public judicial inquiry into the Sinclair Stevens affair, which was carried on cable television and publicly, and where a person kept saying "I didn't have a conflict", when in effect Justice Parker said there were 16 instances of breaches of the code.

I want to turn to page 7 where you're supporting the principle of a jurisconsult. I can't say that I support the system where you can go to the jurisconsult and he gives you a clean bill of health, or he gives you a letter which you can wave around and say see, I'm clean.

It seems to me that the jurisconsult or the commissioner would be sort of a confessor. You can go to confession and tell him how many times you've done this or that, and then he would give you absolution. He would give you advice on what you can do to square yourself with the conflict of interest law.

• 1035

You weren't suggesting, were you, that you would get some letter from the jurisconsult that would cleanse you, as in the case of Quebec? I see a problem with that too.

Mr. Martin: I think the jurisconsult must have the ability to say that he has looked into the facts of a certain matter, and that this matter has been handled in a fair and legitimate way. If he can't do that, how can the public. . .? I think that's a necessary correlation or follow-up to the public disclosure. Otherwise, how is the public to know that what has happened has happened in a fair way?

To go back to the Oceanex example that I gave, if I have been in cabinet—heaven forbid—and I'm not allowed to be involved in the management of the company, I don't know what is going on, and suddenly I'm asked a question about something, how in heaven's name will the public be satisfied that this was all done in a fair and legitimate way if an independent officer of Parliament is not able to ascertain the facts?

Mr. Rodriguez: That's when there's an accusation. I'm talking about when you declare your assets to the jurisconsult. He will know in quantity and in kind what you have. What he puts on the public record may not be quantity, we've come to that understanding. Marcel and I agree. He won't put how many thousand shares you have or what their value is. He will put on the public record what you have, but not quantity. So what are you asking for, for him to give you a letter saying you're all square with me?

Mr. Martin: No.

Mr. Rodriguez: The only time I would see him coming in is if there's a complaint. Some member of Parliament lodges a complaint that Paul Martin has a conflict of interest over whatever. Then he would conduct an inquiry and will report to Parliament if it's a member of Parliament. If it's a cabinet member, he will report to the Prime Minister.

Mr. Martin: The answer to your question is yes but I think the responsibility lies with the individual member as to the accuracy of the information provided. What he does is to monitor and oversee the disclosure process, and make sure it's there. If I understand your question, the role I would see him playing. . . For example, if CSL decided it wanted to bid on a government contract or was going to be doing something, I would expect the company to go to the ethics commissioner, sit down with him and say these are the facts, we want you to be aware of them to make sure everything is being done on the up and up. The ethics commissioner would then examine any individual instance—there won't be that many of them—where a minister might be in an evolving conflict of interest position.

The Joint Chairman (Mr. Blenkarn): I want to comment on that. In my experience, the people who run the companies I have an interest in are always doing things, and I never know what they're doing. The comptrollers are buying and selling foreign exchange all the time. People involved in the sales end of it are negotiating with Trade and Commerce people about PEMD grants and people are talking to EDC all the time. This goes on, and I don't have anything to do with it. I don't have the foggiest idea, nor do I have the time to think about it. These people are paid to do that kind of work, and that's dealing with the government. Surely you don't expect them to come whipping up to see a jurisconsult every time they get involved in forward purchases of exchange.

Mr. Martin: In terms of exchange, I certainly wouldn't think so. Using PEMD grants as an example, I think one of your comptrollers would tell the jurisconsult that this company is applying for PEMD grants, we're applying in the regular way, here it is, and we want you to be aware of it. I think that would happen. I think the ethics commissioner might periodically check and make sure that the PEMD grants are given in a way that you're not influencing them.

• 1040

The Joint Chairman (Mr. Blenkarn): These are the regular actions in the course of business. Your suggestion concerning the Nova Scotia Oceanex problem is something you had no idea of.

Mr. Martin: That's right.

The Joint Chairman (Mr. Blenkarn): The company was doing that on their own. You're not a director of the company, you're not involved. You happen to indirectly own shares in the damned thing. How could you ever be in a conflict there? We know you have shares in it, but the fact is you're not influencing it. You're not involved in that kind of contract.

Mr. Martin. No, but if I were on the government side I would have had somebody from those companies sit down with. . .if the jurisconsult had been established—

The Joint Chairman (Mr. Blenkarn): That would imply you knew something about it.

Mr. Martin: No. I would say, you have to go there and really go through all of this with the ethics commissioner, to make darn sure—

The Joint Chairman (Mr. Blenkarn): I don't know to what extent you control the Oceanex canning company—

Mr. Martin: I don't.

The Joint Chairman (Mr. Blenkarn): —or your family controls it. Are the officers of a company supposed to go running around the countryside to every ethics commissioner, in every one of the legislatures, and Parliament here, every time they have some sort of transaction that conceivably could be influenced by the minister?

The Joint Chairman (Senator Oliver): What he is saying is that at the time that he is asked to go into the cabinet, he would give instructions to get there immediately and go through every one of the companies. That's what I hear you saying.

Mr. Martin: You're quite right, and it would really depend on the degree of influence that I had with that company. If I had shares in IBM—I wouldn't expect IBM to come up, because my influence is nil. On the other hand, if it were a company in which I could be expected to have some reasonable degree of influence, then I think I would do exactly as the senator said.

The Joint Chairman (Mr. Blenkarn): I want to interrupt for a moment. I have one motion I want to put before we lose quorum at any point: that the co-chairman be authorized to pay for expenses incurred for the working session at Wilson House, Meech Lake, provided for in the budget.

Mr. Boudria: I so move.

Mr. Rodriguez: I second the motion.

Motion agreed to

The Joint Chairman (Mr. Blenkarn): Carry on, Mr. Rodriguez.

Mr. Rodriguez: So we have a jurisconsult in place or an ethics commissioner. Do you see complaints going to the commissioner? Will the complaints come from members of Parliament or could the public complain? If the public has some information that there's a conflict of interest, would you see the public being able to complain to the commissioner or will it just be the House of Commons or Senate who can complain to the commissioner?

Mr. Martin: No. I would see the public being able to do so.

Mr. Rodriguez: And then what would happen? Have you looked at that process? Will he conduct an investigation?

Mr. Martin: Yes.

Mr. Rodriguez: How do you prevent frivolous complaints? You could have every Tom, Dick or Harry filing a complaint. My political enemies could—

Mr. Martin: I think you would do it the same way as before the courts. You have to establish a *prima facie* case. Again, I'm going back to the quality of the ethics commissioner, and I think that he or she would have to distinguish between frivolous complaints and complaints that had substance.

Mr. Rodriguez: Does he report to Parliament following the investigation?

Mr. Martin: Yes.

Mr. Rodriguez: In the case of the cabinet, he would report to whom, the Prime Minister?

Mr. Martin: No. I believe he or she should be an officer of Parliament and should report to Parliament.

Mr. Rodriguez: Even for the cabinet?

Mr. Martin: Yes.

Mr. Rodriguez: Okay.

The Joint Chairman (Senator Oliver): Shouldn't that person have legal training, a retired Supreme Court of Canada judge, for example? What types of skills would you like to see them have?

Mr. Martin: I think that the description that Mr. Prud'homme gave is one that I would share. But to be quite honest, Senator, I would like to see as well somebody who had an understanding of the political process, because I think the points that Mr. Rodriguez is raising are quite valid. You really do not want this to be a partisan witch-hunt, you don't want people to be engaging in frivolous things, and so somebody who understood the political process would be very important.

• 1045

I think it's very important the public has the right, the media has the right, and other members of the House of Commons have the right to ask the questions. The problem is, in essence, if you're a minister, they don't have the right to ask them of the minister, because the whole theory is the minister doesn't have the knowledge and the understanding, because he or she has been divorced. . .to answer them. So there has to be somebody there who can find the answers.

Mr. Rodriguez: Now having got that process, there must be some punishments. It's no good having a law unless it has some teeth.

Mr. Martin: Yes.

Mr. Rodriguez: So what kinds of punishments, if somebody is found guilty of a breach of the conflict of interest law? It's not a criminal act, or else it would have been in the criminal section of the code. So what kinds of punishments do you envisage?

Mr. Martin: It depends on the nature of the infraction and whether—

Mr. Rodriguez: In a range.

Mr. Martin: Yes, it would be in a range. Also, obviously some things are going to happen through inadvertence. The fact that it becomes public is punishment enough. On the other hand, quite clearly if somebody has engaged in a wilful breach, boy, ultimately the member should lose their seat and charges should be laid. It depends on the nature of the breach.

Mr. Rodriguez: But let's say there was a conflict of interest that was not criminal in nature. He didn't reveal things he should have revealed to the jurisconsult, for example. Do you see a fine? Do you see suspension from the House? Do you see vacating the seat?

Mr. Martin: Yes.

Mr. Rodriguez: Are those a range of punishments?

Mr. Martin: Yes, I would see it as being within the range you've just described, depending on the infraction.

Senator Balfour: Could it be overruled by the House or Senate, as the case may be?

Mr. Martin: You mean would there be an appeal to a committee of the House?

Senator Balfour: Or to the committee of the whole House, the obvious problem being that it would politicize the process.

Mr. Martin: I'm thinking as I respond to you, Senator. I would not like to see situations where the ethics commissioner would be overruled. I really think there has to be some place where the buck absolutely stops, and that's there. But that being said, I must say I would have some difficulty not allowing appeal to the whole House. If the whole House were to overrule him, then there probably would be grounds for the appeal.

Mr. Rodriguez: But if he's making a recommendation to the House, Paul, it's up to the House to support that recommendation or not support it. So presumably the House would vote on it. Say, for example, he investigates and he says I recommend this member be suspended from the House for two weeks. Well, the House or the Senate will debate it and then vote. Once they make the decision, they can either uphold the recommendation or not uphold it. Right?

Mr. Boudria: Mr. Chairman, may I test an idea here? Perhaps the witness can respond to both at the same time. I think the position of the House has to be supreme. It has to be that way. However, I see a slight difference, that the decision made by the commissioner would be appealable. The House wouldn't necessarily have to support it. It's the other way around. In other words, if you disagree with the decision, you could appeal to the House. The decision of the commissioner wouldn't go to the House for ratification. In other words, we're imagining this backwards.

Ultimately, though, it must be possible to appeal to the House, because Parliament has to be supreme. If we do not have it that way, we're undermining the democratic process.

I do have one further problem, though. It was raised. Under no circumstance would I ever consider someone should be kicked out of the House. It should be possible to admonish someone, to make someone's seat vacant, to fine someone; but to deprive constituents from representation is just wrong. That's the way I look at it.

Mr. Rodriguez: But we did, Don.

The Joint Chairman (Mr. Blenkarn): Without going to court and before a jury and a judge, surely, and with a lawyer arguing your case before an impartial judge, why would you ever deny the person their seat?

Mr. Boudria: That's a different thing. If the House collectively decided. . .and it's not a partisan thing. Need I remind you of a resignation a couple of years ago? The member resigned. It was obvious the House was going to kick him out. We all know who he is.

• 1050

Mr. Rodriguez: Richard. . .

Mr. Boudria: Mr. Grisé. It was obvious. We were all going to kick him out, and he did resign. So notwithstanding the majority that was there, it was so obvious that the person saved himself the embarrassment. So I don't think it's a matter of partisanship and saying look, if you had more government members then they wouldn't do it. I don't think it's that simple. Some cases are so clear-cut that they'd happen anyway.

Mr. Rodriguez: On the same point, I might just observe that oftentimes when a seat is vacant, nobody seems to be very concerned about the constituents being without representation in the House for months and months and months, because that's always done at the political will of whoever is in power. I've seen a seat vacant for close to a year—

Mr. Martin: That's right.

Mr. Rodriguez: —and the people had no representation. So don't start using the phoney argument that somehow or other we have no right to deprive people. We put people out of the House under the present rules.

Remember, Don, we had this power. If you defied the Speaker and the Speaker asked you to apologize but you refused, then the House could vote to exclude you for the day.

Mr. Martin: That's right.

Mr. Rodriguez: So it's not something new.

Mr. Martin: If I could just respond to the first part of the question, I believe that in the vast majority of cases the decision of the jurisconsult or the ethics commissioner should be final. I do think quite clearly that there should be an appeal to the House of Commons. Ultimately, the House must be supreme; I have no doubt about that.

Having said that, the problem I would run into is that the majority of conflict cases are going to arise where it's a government member. I don't think it would help the process very much if indeed a government used its majority to

overrule the ethics commissioner in the House. That's a problem. Confidence in the ethics commissioner is really one of the major pillars and one on which this is all built, but in the end you cannot take away from the House its ability to be the final court in the land.

Senator Balfour: [*Inaudible—Editor*]. . .being overruled in the manner you described, he would have no option but to resign, and that would carry a political price.

Mr. Martin: Yes.

Mr. Prud'homme: Mr. Chairman, with your permission, I would just like to express my apologies to the witness, who is a colleague of mine. I sit on the Management committee of the House of Commons and our witness today is the Chief Electoral Officer. So, my departure is in no way a sign of rudeness, dear colleague, but simply a result of my having to be at another committee meeting where we are scheduled to discuss your concern about reducing the pre-election period. That is part of our work. So, I just want to apologize for having to leave early.

Mr. Rodriguez: One last point: does the witness think that our bill should do the same as the British conflict of interest bill—

The Joint Chairman (Mr. Blenkarn): Why don't you let Senator Grimard ask some questions, and you will get a supplementary in due course.

Mr. Rodriguez: Could you just give a quick yes or no? Should we cover the press under the conflict of interest rules here as they do in Britain?

Mr. Martin: I've really addressed myself, certainly, to members of Parliament. On the way out, Mr. Prud'homme was talking about judges; I think judges should be included. Off the top of my head, without having thought about it further, I'm not sure I would include the press.

Senator Grimard (Quebec): Mr. Martin, I must tell you that I was quite favourably impressed by your presentation. Since we began our hearings in this committee, we have heard primarily from intellectuals. You, however, are an experienced businessman and not afraid to discuss your own personal case. In the brief you presented at the start of the meeting, you gave personal information regarding your companies and were not afraid to illustrate your remarks with your own case. I am very pleased that you have done this, because most of the witnesses we have heard from thus far, while they were all extremely intelligent, were not as involved as you are in the business world.

Essentially, you are advocating full disclosure and you make no distinction between the kind of disclosure required of a minister and that required of a parliamentary secretary, member of Parliament or humble senator. Do you, Mr. Martin, see any difference in the type of disclosure that would be required of the various categories of parliamentarians?

Mr. Martin: Yes, but first Senator, with respect to my personal reputation, since my election have I have not taken a hand in the company as such. I may be entitled to do so, but since my election I have been so busy with my work as a member of Parliament, that I have not been involved at all in the company. If you spend 10 per cent of your time in a company, you run the risk of causing damage. Therefore, I decided it would be better to stay away from the company.

To answer your question, I think that for ministers the disclosure should be as full and public as possible. This is probably also the case for a parliamentary secretary. For a member of Parliament, the same degree of disclosure may not be necessary. As Mr. Boudria has suggested, this might entail disclosure to a jurisconsult and not necessarily a public disclosure.

However, I would advise anyone to make as complete a disclosure as possible. We never know when a backbencher might find himself or herself in a position of conflict of interest.

Senator Grimard: Do I presume that the same would hold true for senators?

Mr. Martin: Yes, and this will be even more important in view of the new role that senators will probably play after the constitutional change.

Senator Grimard: You are a member of Parliament, but some day, I hope not too soon, you may perhaps assume new duties. If you were a minister, would you make the sort of disclosure that you have suggested today, or would you be even more demanding of yourself than you presently are as a member of Parliament?

Mr. Martin: I made a public disclosure after my election in 1988, and I intend to update it this month. It will be even more complete. There will be more details.

As a backbencher, I made a statement of disclosure, and if I ever became a minister, I would make an equally complete statement.

Senator Grimard: You have spoken out very strongly against divestment, and I understand your point. You have given very important reasons, and I agree with you, but if you were a minister, could you continue to reject the idea of divestment?

Mr. Martin: The answer to your question is yes. Otherwise, we would be saying to any business person: Do not bother running, because you will never have access to a cabinet position. In my opinion, the only reply is full disclosure. I do not think that selling the assets is the best answer. That would be completely discouraging.

Senator Grimard: Thank you very much. Your frankness and integrity have impressed me. I believe that the committee has benefitted from your evidence.

Mr. Boudria: I want to get back to the idea we were discussing a while ago. I've had a chance to think about it even further, and even strengthen my view, and I want to submit it to the rest of our committee.

• 1100

When we're saying that we shouldn't be concerned about the possibility that a seat could be rendered vacant temporarily when someone is expelled from Parliament, we're saying that it is not a new element because it's done now.

The difference is that Parliament itself does it now. Do we want to give the authority to someone who isn't a parliamentarian to expell a parliamentarian? That's the point I think Mr. Rodriguez missed. I think that is absolutely dreadfully wrong. I want to submit that to you again. I don't think there appeared to be much support around the table for his proposition, but I've just thought of an additional reason why it's wrong, if I can put it that way, Mr. Chairman.

Blind trust and public disclosure I think we need to think about even more. In some provincial jurisdictions, where you have one, you don't have the other. It's an either-or proposition, one possible reason being the fact that if you have something public, it's obviously not blind. If everybody else can see it, so can you. To that extent there's not much of a blind trust element or at least it's not as blind as it would otherwise be. I wonder how we reconcile that, Mr. Chairman. Perhaps our witness has some ideas. Frankly, I have to do a little bit more thinking about it myself, but there is an obvious difficulty in that regard.

Secondly, I submit the following proposition as well. When we had Jean-Pierre Kingsley, the former Assistant Deputy Registrar General, before us, he said that only certain assets should be—shall I use the euphemism—blind trustable—

The Joint Chairman (Mr. Blenkarn): They wouldn't have permitted you in the cabinet. That is very simple. Neither would Georges Tsai, because they of course determine who the cabinet should be composed of.

Mr. Boudria: The importance of raising all this is that I think whoever administers those rules must be given very, very careful direction in whatever we do. We can't leave people to make up the rules. We have to make the rules. They have to administer them, not make them up as they go, because that's dreadful.

The Joint Chairman (Senator Oliver): They should have clear regulations.

Mr. Boudria: Absolutely. That's the difficulty here. For instance, Mr. Kingsley was saying that only publicly traded shares, only instruments that can be disposed of overnight should be in a blind trust. I believe those are his words, "overnight". For instance, let's say that you own the family hardware store. You can't put that in a blind trust. It just cannot be done.

I think I've given you lots of stuff to comment on. They're all important things, I think.

Mr. Martin: Let me talk about the blind trust and then let me get into the second. I think the second raises a very important philosophical question as to where this country's going.

I do not think blind trusts are particularly effective. I am not a big fan of blind trusts. For me, for the sake of discussion, again to go back to my own example, to put CSL into a blind trust... I know what the business does; the whole country knows what the business does, whether it's publicly disclosed or not. That's why the heavy emphasis on the ethics commissioner and on public disclosure. But the blind trust does do one thing. It establishes a mechanism whereby I can formally distance myself from the management of the company. That's how I saw it in this particular case. I see it very much as an addendum, not as the answer.

I want to go to your second question, because it's something actually the chairman has made some reference to, and I think it's very important. I think it may be one of the most important things in terms of where this committee is going. We have built this country on the basis primarily of attracting foreign investment to come in here and build branch plants, large transnational companies. That is not where we're going in the future. For the first time in our history we are not able to rely on natural resource companies or transnationals for the creation of employment. We are really thrown into the position of most other countries. We're going to have to turn to Canadians to build the country.

• 1105

When you turn to Canadians to build a country, they start by building small and medium-sized companies. Most of them are privately or family owned. They may do private placements, but effectively the control lies within the hands of individual entrepreneurs. That's where this country is going. If we want to build this country, we are going to have to build it on the basis of Canadian entrepreneurship.

Now, having said that, with which I think most people would agree, and we want that new very positive thrust to be reflected in the governing of the country, if we then say we're going to build this nation on your activities, but the only people we're going to allow in government are those who invest in publicly traded multinational companies, which are easily disposable, we are really saying we are going to have a government that is totally divorced from the economic reality of the nation. I think that would be totally counterproductive.

Mr. Boudria: I guess blind trust is really a misnomer. We're talking about a form of management trust. In all instances it would have the total management, but it certainly would not always be blind. Some cases, such as the one you have described, would perhaps have many qualities, such as separate and independent, but not blind.

Who should or shouldn't be the trustee? This has been very tough stuff. You will remember the notorious case of someone who had his riding association president as his trustee. Someone else had his spouse and someone else as trustees. I don't think very many people think that's a very good form of trusteeship for a blind trust. No one here I think advocates that, but where does it become right?

Are only the Canada Trusts of this world able to do that and keep that arm's-length relationship and be registered? Who else can do it? Where does it stop? Everyone agrees it shouldn't be your wife or your campaign manager, but who else can it be?

Mr. Martin: My own view is that it should be a registered trustee. Nothing prevents that trustee from either hiring an investment manager if you have a portfolio to be invested, or holding the shares of a company where you have independent management running it. The trustee can be the holder of the shares. The trustee needn't be the management of the business.

The Joint Chairman (Mr. Blenkarn): That's exactly what Stevens did. Stevens had the shares held by the trust company that of course did nothing with them because they didn't need to vote the shares. The directorship controlled the damn public company and Mrs. Stevens was the president. That was all disclosed publicly. The holding of the shares doesn't mean a damned thing, because it's effectively a family-controlled company and the officers are relatives—

Mr. Martin: Which is why public disclosure and the ethics commissioner are so important.

The Joint Chairman (Mr. Blenkarn): That's right, but there's no need for a trustee to hold shares of that. He holds shares, but he can't sell them. He can't easily sell them without all sorts of problems with securities commissions and everything else.

Mr. Martin: No, but we keep coming back to it. That is why I've said consistently, public disclosure and the ethics commissioner is the answer. The blind trust is simply an addendum, a mechanism. It is not the answer.

Mr. Boudria: Should the name of the trustee or trustees be public? That's not the case right now.

Mr. Martin: Well I think everything should be public.

• 1110

Mr. Boudria: Because right now, for instance, if you were to phone Georges Tsai and say I want to know who the trustee is for the Prime Minister's blind trust, he wouldn't answer.

Mr. Martin: I think everything should be public.

Mr. Boudria: All tight.

The Joint Chairman (Mr. Blenkarn): Apparently we're losing quorum. That's not because you're not one of the best witnesses we've ever had. Members anticipated the meeting would only last till about 10.30. We've had a very excellent presentation.

Mr. Boudria: Good stuff.

The Joint Chairman (Mr. Blenkarn): Thank you very, very much for coming.

Mr. Martin: Mr. Chairman, thank you for inviting me.

The Joint Chairman (Mr. Blenkarn): The meeting is adjourned.

Appendix D

MEMBERS' CONFLICT OF INTEREST ACT

CHAPTER 54

Assented to July 27, 1990.

Contents

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31. Commencement

Interpretation

1. In this Act

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 10;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a "private issuer" as defined in the *Securities Act;*

"private interest" does not include an interest in a decision

(a) that is of general public application,

(b) that affects a member as one of a broad class of electors, or

(c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife and has lived as such for a continuous period of not less than 2 years but does not include a husband or a wife who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

1990-54-1.

Conflict of interest

2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest.

1990-54-2.

Insider information

3. A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

1990-54-3.

Influence

4. A member shall not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

1990-54-4.

Activities on behalf of constituents

5. This Act does not prohibit the activities in which members normally engage on behalf of constituents.

1990-54-5.

Accepting extra benefits

6. (1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) Where a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or where the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member shall immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

1990-54-6.

Former members of Executive Council, benefits and lobbying

7. (1) The Executive Council, a member of the Executive Council or an employee of a ministry, other than an employee of an agency, board or commission, shall not knowingly,

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council, until 12 months have expired after the date when the former member ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council who has, during the 12 months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has, during the 12 months after the date when he or she ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the Crown.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council shall not, unless 12 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the Crown.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A person who contravenes subsection (4) is guilty of an offence and liable, on conviction, to a fine of not more than $5 000.

1990-54-7.

Carrying on business

8. (1) A member of the Executive Council shall not,

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party,

where any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council shall comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust shall be approved by the commissioner,

(b) the trustees shall be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees shall not consult with the member with respect to managing the trust property, and

(d) the trustees shall report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member and the commissioner forthwith after the changes have occurred.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

1990-54-8.

Procedure on conflict of interest

9. A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

1990-54-9.

Commissioner

10. (1) There shall be a commissioner who is an officer of the Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council shall appoint the person so recommended to the office of commissioner.

(3) The commissioner shall hold office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the expiration of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner shall be paid compensation as may be fixed by the Lieutenant Governor in Council.

(6) Where

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Industrial Relations Act* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) The Lieutenant Governor in Council may order that the *Pension (Public Service) Act* applies to the commissioner and to any person the commissioner employs.

1990-54-10.

Annual report

11. The commissioner shall report annually upon the affairs of his or her office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

1990-54-11.

Disclosure statement

12. (1) Every member shall, within 60 days of being elected, and thereafter annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) The disclosure statement shall contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, shall meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner shall ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 1 (2) to (6) of the *Company Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she shall advise the member of the fact, in writing, and shall also mention the fact in the public disclosure statement prepared under section 13.

1990-54-12.

Public disclosure statement

13. (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner shall prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except,

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement shall contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 6 (3).

(3) The commissioner shall, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who shall

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

1990-54-13.

Commissioner's opinions and advice

14. (1) A member may, by application in writing, request that the commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this Act.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

1990-54-14.

Commissioner's opinion on referred question

15. (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act or of section 25 of the *Constitution Act*.

(3) Where a matter has been referred to the commissioner under subsection (1), neither the Legislative Assembly nor a committee of it shall conduct an inquiry into the matter nor shall any member raise the matter in the Assembly or in a committee.

1990-54-15.

Inquiry

16. (1) On receiving a request under section 15, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) Where the request for an opinion is made under section 15 (1), the commissioner has the powers of a commissioner under the *Inquiry Act*.

(3) Where the request for an opinion is made under section 15 (1), the commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not in session, to the Clerk of the Assembly who shall send a copy of it to all members of the Assembly.

(4) Where it appears to the commissioner that the report may adversely affect the member, the commissioner shall inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 15 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and where he or she does so, the commissioner shall report the matter to the Speaker who shall lay the report before the Assembly and the Assembly may, after considering the matter, hold the member in contempt of the Assembly.

(6) Where the request for an opinion is made under section 15 (2), the commissioner shall report his or her opinion to the Secretary of the Executive Council.

1990-54-16.

Penalties

17. (1) Where the commissioner conducts an inquiry following a request under section 15 (1) and finds that the member has contravened section 3, 4 or 6 to 9, or has refused to file a disclosure statement within the time provided by section 12, the commissioner may recommend, in the report that is laid before the Assembly

(a) that the member be reprimanded,

(b) that the member be suspended for a period specified in the request,

(c) that the member be fined an amount not exceeding $5 000, or

(d) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Assembly shall consider the commissioner's report and respond to it as subsection (3) provides within

(a) 30 days after it is laid before the Assembly, or

(b) if the Assembly is not in session, within 30 days after the next session begins.

(3) The Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Assembly shall not further inquire into the contravention nor shall the Assembly impose a punishment other than the one recommended by the commissioner.

1990-54-17.

Protection of commissioner

18. No action of any kind lies against the commissioner for anything he or she does under this Act.

1990-54-18.

Appropriation

19. Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

1990-54-19.

Offence Act

20. Section 5 of the *Offence Act* does not apply to this Act.

1990-54-20.

Regulations

21. The commissioner may, subject to the approval of the Lieutenant Governor in Council, make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

1990-54-21.

22 to **30.** [Consequential amendments. Spent. 1990-54-22 to 30.]

Commencement

31. (1) This Act comes into force by regulation of the Lieutenant Governor in Council.

(2) Members who are in office when this Act comes into force shall file the disclosure statement required by section 12 within 60 days after this Act comes into force and the public disclosure statement under section 13 shall be filed within 30 days after that.

1990-54-31.

[Note: Section 19 effective November 2, 1990 and remainder of Act, except section 15 (3), effective December 21, 1990 (B.C. Regs. 376/90, 428/90 and 469/90).]

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